

In the Matter of:

ESTATE OF PATRICK HARMON, SR., et al.

VS

SALT LAKE CITY CORPORATION, et al.

KRIS SMITH

June 16, 2022

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ESTATE OF PATRICK HARMON, SR., et al. vs SALT LAKE CITY CORPORATION, et al.
KRIS SMITH - 06/16/2022

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT STATE OF UTAH, CENTRAL DIVISION</p> <p style="text-align: center;">- - -</p> <p>ESTATE OF PATRICK HARMON,) SR.; PATRICK HARMON II,) No. 2:19-cv-00553-HCN-CMR as Personal Representative) of the Estate of Patrick) Harmon, Sr., and heir of) District Judge: Patrick Harmon Sr., TASHA) Howard C. Nielsen, Jr. SMITH, as heir of Patrick) Harmon, Sr.,) Magistrate Judge:) Cecilia M. Romero</p> <p style="padding-left: 40px;">Plaintiffs,)</p> <p style="padding-left: 40px;">vs.)</p> <p>SALT LAKE CITY CORPORATION,) a municipality; and OFFICER) CLINTON FOX, in his) individual capacity,)</p> <p style="padding-left: 40px;">DEFENDANTS.)</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">DEPOSITION OF KRIS SMITH DEISS LAW SALT LAKE CITY, UTAH JUNE 16, 2022</p>	<p style="text-align: right;">Page 3</p> <p>1 KRIS SMITH, WITNESS</p> <p>2 INDEX OF EXAMINATION PAGE</p> <p>3 Examination by Mr. Lutz 4</p> <p>4 Reporter Certificate 112</p> <p>5 Witness Certificate 114</p> <p>6</p> <p>7 INDEX OF EXHIBITS PAGE</p> <p>8 EXHIBIT</p> <p>9 No. 1 Taser X26P CEW User Manual 39</p> <p>10 No. 2 Color Photograph Bates-stamped 107</p> <p>11 SLCPD001769</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL:</p> <p>2 FOR PLAINTIFFS:</p> <p>3 Nicholas A. Lutz</p> <p>4 RATHOD MOHAMEDBHAI, LLC</p> <p>5 2701 Lawrence Street, Suite 100</p> <p>6 Denver, Colorado 80205</p> <p>7 303.578.4400</p> <p>8 NL@rmlawyers.com</p> <p>9</p> <p>10 Corey D. Riley</p> <p>11 DEISS LAW PC</p> <p>12 10 West 100 South, Suite 425</p> <p>13 Salt Lake City, Utah 84101</p> <p>14 801.433.0226</p> <p>15 801.433.0226</p> <p>16</p> <p>17 FOR DEFENDANTS:</p> <p>18 Katherine Nichols</p> <p>19 SALT LAKE CITY ATTORNEY'S OFFICE</p> <p>20 35 East 500 South, Second Floor</p> <p>21 Salt Lake City, Utah 84111</p> <p>22 385.468.7900</p> <p>23 Katherinenichols@slcgov.com</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 SALT LAKE CITY, UTAH, JUNE 16, 2022, 9:04 A.M.</p> <p>2 * * * * *</p> <p>3 KRIS SMITH,</p> <p>4 called as a witness herein, having been first duly</p> <p>5 sworn, was examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. LUTZ:</p> <p>8 Q. Good morning, Officer Smith. Are you still</p> <p>9 employed with the Salt Lake City Police Department?</p> <p>10 A. I am not.</p> <p>11 Q. Are you still a police officer?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Should I go ahead and refer to you as</p> <p>14 Officer Smith?</p> <p>15 A. That's fine.</p> <p>16 Q. I briefly introduced myself off record, but</p> <p>17 my name's Nick Lutz. I'm the attorney for the</p> <p>18 plaintiffs in this case which are Patrick Harmon, Tasha</p> <p>19 Smith, and the Estate of Patrick Harmon Sr.</p> <p>20 Can you please state and spell your name for</p> <p>21 the record.</p> <p>22 A. My name is Kris Smith and it's spelled</p> <p>23 K-r-i-s, last name is S-m-i-t-h.</p> <p>24 Q. And have you ever been deposed before?</p> <p>25 A. Yes. Once.</p>

<p style="text-align: right;">Page 5</p> <p>1 Q. Okay. So a lot of this is going to be</p> <p>2 familiar to you, but I want to go over sort of the</p> <p>3 protocols first, so there are just a couple of ground</p> <p>4 rules, the most important being that because we have a</p> <p>5 court reporter here taking down everything that we say,</p> <p>6 it's important that we don't talk over each other.</p> <p>7 So I will wait for you to finish your answer</p> <p>8 before I start asking another question and if you could</p> <p>9 do the same, wait for me to finish the question before</p> <p>10 you answer, that will be very helpful.</p> <p>11 A. Okay.</p> <p>12 Q. Along the same lines, it's important that we</p> <p>13 give verbal answers for every question. So things like</p> <p>14 nodding or mm-hms don't come across on the transcript</p> <p>15 well, so using yes, no, and verbal language is</p> <p>16 important.</p> <p>17 A. (Nods head.)</p> <p>18 Okay.</p> <p>19 Q. If you don't know the answer to something I</p> <p>20 ask, just tell me. It's perfectly okay if you really</p> <p>21 don't know. I'll try to take breaks pretty regularly.</p> <p>22 I think we're only scheduled for half day today, so I</p> <p>23 don't think you're in for the long run, but all the</p> <p>24 same, it's, you know, we'll take breaks as needed. If</p> <p>25 you want to take a break at any time, just say so and</p>	<p style="text-align: right;">Page 7</p> <p>1 A. No. None at all.</p> <p>2 Q. Okay. Can I ask you what you did to prepare</p> <p>3 for your deposition today?</p> <p>4 A. I met with our attorney and re -- not rehash,</p> <p>5 but reviewed everything from the events from that</p> <p>6 night.</p> <p>7 Q. Okay. Did you review any documents?</p> <p>8 A. No.</p> <p>9 Q. Did you speak to anyone other than</p> <p>10 Ms. Nichols?</p> <p>11 A. In preparation for this?</p> <p>12 Q. Yeah.</p> <p>13 A. No.</p> <p>14 Q. Neither of the other officers?</p> <p>15 A. No.</p> <p>16 Q. And by that I mean Officers Fox or Robinson.</p> <p>17 A. Yeah. No, I haven't spoken to any of them in</p> <p>18 preparation for this.</p> <p>19 Q. Okay. You said you had been deposed once</p> <p>20 before. What was that case?</p> <p>21 A. It was a traffic accident.</p> <p>22 Q. And what was your role?</p> <p>23 A. I was the investigating officer.</p> <p>24 Q. Okay. And so there was a civil case that</p> <p>25 came out of that?</p>
<p style="text-align: right;">Page 6</p> <p>1 we'll do it. The only exception to that is if there's</p> <p>2 a question pending.</p> <p>3 Your attorney, Ms. Nichols, will probably</p> <p>4 occasionally object to some of the questions I ask.</p> <p>5 Generally speaking, you can just still answer the</p> <p>6 question. The exception to that is if she instructs</p> <p>7 you not to answer, that will happen usually in matters</p> <p>8 of privilege like attorney-client privilege. As a</p> <p>9 general rule, I don't ever want to know conversations</p> <p>10 that you have had with Ms. Nichols or any of your other</p> <p>11 lawyers in this matter.</p> <p>12 You've testified in court before; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And you understand that the oath that you</p> <p>15 took is the same oath that you would take in a criminal</p> <p>16 court to tell the truth under penalty of perjury?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And are you suffering from any</p> <p>19 illnesses or medical conditions that might make it</p> <p>20 difficult to testify today?</p> <p>21 A. No.</p> <p>22 Q. Under the influence of any medications or</p> <p>23 anything of that nature that would make it difficult --</p> <p>24 A. No.</p> <p>25 Q. -- to remember?</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Correct.</p> <p>2 Q. Okay. When was that?</p> <p>3 A. I don't remember, but easily five, six years</p> <p>4 ago.</p> <p>5 Q. Okay. Do you recall what court?</p> <p>6 A. It was here in Salt Lake.</p> <p>7 Q. Do you have any idea what the outcome of the</p> <p>8 case was?</p> <p>9 A. I do not.</p> <p>10 Q. You mentioned that you have testified before</p> <p>11 as a witness in criminal court. How many times would</p> <p>12 you say you've done that?</p> <p>13 A. I don't know. Too many.</p> <p>14 Q. I'm guessing it's a lot.</p> <p>15 A. Yeah. A fair amount.</p> <p>16 Q. How long were you with the SLCPD?</p> <p>17 A. Six years.</p> <p>18 Q. Okay. So would you say you've testified in</p> <p>19 hundreds of cases?</p> <p>20 A. Potentially.</p> <p>21 Q. And then any other -- have you given any</p> <p>22 other testimony as a witness?</p> <p>23 A. Just in criminal cases and then that one</p> <p>24 deposition.</p> <p>25 Q. Okay. So you mentioned that you had met with</p>

<p>Page 9</p> <p>1 Ms. Nichols to kind of review or rehash sort of the</p> <p>2 circumstances of this case. Have you read the</p> <p>3 Complaint?</p> <p>4 A. No.</p> <p>5 Q. Have you read any of the legal filings?</p> <p>6 A. No.</p> <p>7 Q. Or listen to any of the hearings?</p> <p>8 A. I have not.</p> <p>9 Q. What is your understanding of what the</p> <p>10 primary allegations of the case are?</p> <p>11 MS. NICHOLS: Objection, vague.</p> <p>12 You can answer.</p> <p>13 THE WITNESS: From what I understand, that we</p> <p>14 violated Mr. Harmon's rights and the family is suing</p> <p>15 over the alleged violations.</p> <p>16 Q. (BY MR. LUTZ) Okay. And you understand that</p> <p>17 you're not a defendant?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And do you know what conduct is</p> <p>20 alleged to have violated Mr. Harmon's rights?</p> <p>21 A. I'm going to assume that it was when Officer</p> <p>22 Fox shot him.</p> <p>23 Q. Okay. I'd like to talk to you a little bit</p> <p>24 about your background as a law enforcement officer.</p> <p>25 A. Okay.</p>	<p>Page 11</p> <p>1 THE WITNESS: It would -- they're different jobs,</p> <p>2 so it's hard to explain. They each have their own</p> <p>3 function, and one has different opportunities than the</p> <p>4 other, and they're just kind of different roles. So</p> <p>5 there were things I liked about being a correctional</p> <p>6 officer, there are things that I didn't like, and the</p> <p>7 same goes for being out on the road.</p> <p>8 Q. (BY MR. LUTZ) What facility did you work for</p> <p>9 as a --</p> <p>10 A. The Salt Lake City correctional facility.</p> <p>11 Q. Okay. The reason I ask is just I know that a</p> <p>12 lot of correctional officers get tired of being in the</p> <p>13 facility all day every day, that sense of confinement.</p> <p>14 I'm sort of curious if you experienced that.</p> <p>15 A. I was lucky because I was able to move around</p> <p>16 in different positions within the facility, so it</p> <p>17 wasn't, you know, it wasn't really confined because I</p> <p>18 was able to have a little bit more movement than most.</p> <p>19 Q. Okay. Do you recall which positions you</p> <p>20 held?</p> <p>21 A. I was housing officer, I was a booking</p> <p>22 officer, booking/intake officer, and then I was a video</p> <p>23 arraignment officer, and also IS liaison officer.</p> <p>24 Q. And were you ever involved in any of those</p> <p>25 capacities in, like, inmate disciplinary matters?</p>
<p>Page 10</p> <p>1 Q. Was Salt Lake City Police Department your</p> <p>2 first law enforcement job?</p> <p>3 A. It was not.</p> <p>4 Q. When did you enter law enforcement?</p> <p>5 A. 2008.</p> <p>6 Q. And in what capacity?</p> <p>7 A. I worked for the Salt Lake City Sheriffs</p> <p>8 Office as a correctional officer.</p> <p>9 Q. Okay. And how long did you stay in that</p> <p>10 position?</p> <p>11 A. Six years.</p> <p>12 Q. And were you ever promoted?</p> <p>13 A. No.</p> <p>14 Q. When did you move on?</p> <p>15 A. That would be 2014.</p> <p>16 Q. What made you decide to do that?</p> <p>17 A. Money. Moved to Salt Lake City Police</p> <p>18 Department. They were paying better, better</p> <p>19 opportunities.</p> <p>20 Q. Okay. Did you like being a police officer</p> <p>21 more than a corrections officer?</p> <p>22 A. Yes and no at the same time. There's</p> <p>23 differences.</p> <p>24 Q. Yeah. Can you tell me anything about that?</p> <p>25 MS. NICHOLS: Objection, vague.</p>	<p>Page 12</p> <p>1 A. No.</p> <p>2 Q. Okay. Did you ever have any complaints filed</p> <p>3 against you by inmates?</p> <p>4 A. By the inmates, not that I recall. I know I</p> <p>5 had one complaint filed after somebody was released</p> <p>6 from jail, but not that I'm aware of of anybody in</p> <p>7 custody.</p> <p>8 Q. What was the nature of that complaint?</p> <p>9 A. It was that I cut a gentleman's dreadlocks.</p> <p>10 He had some beads that were the size of softballs and</p> <p>11 the -- the rules of the facility are you can't take</p> <p>12 anything that was -- can be used as a weapon into the</p> <p>13 facility. And the individual was intoxicated, was</p> <p>14 fighting with us, and because of that I removed his two</p> <p>15 beads that were, again, the size of softballs, put them</p> <p>16 in his property bag, and he filed a complaint that I</p> <p>17 cut his hair.</p> <p>18 Q. Okay. How did you cut the beads out?</p> <p>19 A. Just with a pair of scissors. Cut them right</p> <p>20 above the top so that I could remove them and . . .</p> <p>21 Q. Was this inmate just coming into the</p> <p>22 facility?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And there was a physical altercation?</p> <p>25 A. I wouldn't really call it a physical</p>

<p style="text-align: right;">Page 13</p> <p>1 altercation. He's still in handcuffs. We had to use 2 force to hold him against the wall to complete the 3 search, but, you know, there were no strikes or 4 anything like that. 5 Q. How many other corrections officers were 6 present? 7 A. I don't remember, but easily three. 8 Q. Do you remember their names? 9 A. I don't. 10 Q. Sorry. Will you remind me what year you 11 moved on to Salt Lake City Police Department. 12 A. 2014. 13 Q. Okay. And what was your original capacity 14 with that department? 15 A. Patrol officer. 16 Q. And did you change positions every time? 17 A. I did. 18 Q. Can you kind of walk me through your 19 progression there. 20 A. I was a patrol officer, and then I was 21 assigned to the bike patrol squad, and then after I 22 left the bike patrol squad. I was assigned to canine 23 squad. 24 Q. Do you recall the approximate time frames of 25 those positions?</p>	<p style="text-align: right;">Page 15</p> <p>1 address whatever that situation was. 2 The bike patrol officers, unless it was a 3 call that specifically occurred inside one of the 4 parks, we were not answering those calls for service 5 because our primary job was to be proactive and 6 essentially be visible through the parks and help in 7 those capacities. 8 Q. I see. So you were on the bike patrol first, 9 then you said canine patrol? 10 A. Correct. 11 Q. Which I assume means you were in a car with 12 one of the canine officers? 13 A. Yeah, correct. 14 Q. Same canine the whole time? 15 A. Same canine. 16 Q. Do you remember its name? 17 A. Goose. It started out with -- I started with 18 T-bone. His name was T-bone. He was a blood hound. 19 He was older and ended up retiring him, then was given 20 a single purpose narcotics detection dog. He was a 21 little Jagdterrier terrier (indicating). His name was 22 Dante. And then I traded my sergeant because my 23 sergeant was not using his patrol dog, and so he took 24 Dante and then I took his patrol dog named Goose and 25 handled Goose.</p>
<p style="text-align: right;">Page 14</p> <p>1 A. I don't remember when I got assigned to the 2 bike squad. It was probably after I'd been there about 3 three years. I was on the bike squad for about a year, 4 and then was about two years, just under two years on 5 the canine squad. 6 Q. Okay. What are the differences in those 7 positions? 8 A. Between? 9 Q. Let's say the bike squad and the canine 10 squad. 11 A. Their job rules. So the bike squad's primary 12 function was patrolling the parks like Liberty, Liberty 13 Park, Sugar House Park, some of the bigger parks that 14 don't have a lot of access by vehicle, and so we were 15 assigned bicycles to ride through the different parks 16 and patrol those areas. 17 Q. Okay. Are you still functioning as a patrol 18 officer in that capacity or is there a difference? 19 A. So the only difference is we're not call 20 responsive like the regular patrol officers were. 21 Q. Can you explain what that means. 22 A. So the call responsive means that the patrol 23 officer, if somebody calls 911, says I need this 24 assistance, that patrol officer gets assigned that call 25 and has to respond to that specific location and</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Goose was quite a handful? 2 A. Yes. 3 Q. I imagine that was probably difficult to -- 4 A. It's a lot of work. 5 Q. -- let him go. 6 A. Yeah. It's a lot of work. 7 Q. Maybe you don't feel that way, but I'm 8 assuming you're a dog person if you love working with 9 the canine unite. 10 A. I am. 11 Q. So were all those dogs specifically narcotic 12 detection dogs? 13 A. So T-bone was not a narcotics detection dog, 14 he was a tracking dog, so his only job was to find 15 people. Dante was that single purpose narcotics 16 detection dog and then Goose was a dual purpose dog. 17 He was used for narcotics and also patrol work, so 18 anything from searching for people, searching for 19 articles, apprehension if needed. He was kind of the 20 Jack of all trades. 21 Q. When you say apprehension if needed, is 22 that -- what does that mean? 23 A. It means letting the dog physically apprehend 24 the suspect or prevent him from either fleeing or 25 fighting any further.</p>

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1 Q. Did you ever have to do that?

2 A. Yes.

3 Q. How many times?

4 A. Three.

5 Q. And, similarly, did any of them ever help you

6 track down a suspect?

7 A. Yes.

8 Q. How many times would you say?

9 A. Easily triple that amount.

10 Q. That's pretty impressive. Were you involved

11 in the training at all?

12 A. Yes.

13 Q. What did that entail?

14 A. A lot of work. A lot of our primary focus is

15 finding people because 95 percent of the time the dogs

16 were used as a search tool to try and locate somebody

17 and so there was -- most of our training involved us,

18 the handlers, going to someplace and hiding and then

19 waiting and letting one of the other handlers use their

20 dog to try and locate us.

21 Q. What's the method that they used?

22 A. The method as far as?

23 Q. Well, I have a vague understanding from TV

24 and movies that you give clues about the suspect or

25 individual that you're looking for like scent. Is that

Page 18

1 right?

2 A. Yes and no. So there's people that buy into

3 the scent article theory and there's a lot of people

4 that don't. It's pretty hard to get -- to teach a dog

5 to be called what's -- what is called scent

6 discriminatory, meaning I give the dog a specific item

7 that belonged to the individual and that's the only

8 odor that he's supposed to track. It's pretty

9 difficult to teach a dog that.

10 Most of our dogs, not most but all of the

11 Salt Lake dogs were not scent discriminatory meaning

12 that they -- we'd get into an area and we would say

13 hey, where's the last known direction that this person

14 went and they, you know, would give us a direction and

15 that's the direction that we let the -- allow the dog

16 to go, and then the dog would just eventually pick

17 in -- pick up on different odors and we'd have to go

18 through all those odors and identify, you know, if we

19 find too many people, you know, it's going to be

20 incredibly difficult to say well, this is the guy that

21 ran or this is the guy that ran.

22 But typically we're using them in the middle

23 of the night and you're going to find one person hiding

24 underneath a car or in a back yard or something and the

25 dog takes you to them. That's usually going to be the

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1 individual that you're looking for.

2 Q. I see. Okay. So you eventually moved on

3 to -- was the canine patrol your last position?

4 A. Yes.

5 Q. And why did you move on from Salt Lake City

6 Police Department?

7 A. Poor leadership. That's the short answer for

8 it.

9 Q. When was that?

10 A. That would be 2020.

11 Q. And when you say poor leadership, who are we

12 talking about?

13 A. The chief.

14 Q. And who was that at the time?

15 A. Mike Brown.

16 Q. What was it that you found poor about his

17 leadership?

18 A. His lack of spine.

19 Q. Can you elaborate?

20 A. So he would -- he would never make a decision

21 and stand by it. He would always try to -- he very

22 much, for lack of a better term, it was a forked

23 tongue. He would tell you what you wanted to hear, but

24 then any time that he took some sort of action, he

25 would do something completely different.

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1 Q. Can you give my any examples of that?

2 A. Well, before I left he stood and was involved

3 in a river res -- I was involved in a river rescue. He

4 stood and said that me and the other officers that were

5 involved were the epitome of what every Salt Lake City

6 officer should be and that if we all the officers

7 strive to be like us, then Salt Lake is going to be a

8 phenomenal department.

9 And, literally, two weeks later he stood and

10 said that I was the stain on the department because we

11 had one of the canine handlers get charged with an

12 aggravated assault, and he -- the chief lumped us all

13 into the same boat as that officer. And when

14 confronted, I tried to confront him about his

15 statements, and he was like didn't want to deal with

16 it, was very -- avoided me, and so I was like I'm out,

17 I'm not -- you can't pick both sides and tell me that

18 I'm both sides without some sort of justification. So

19 I decided to leave.

20 Q. Do you remember the name of the officer, the

21 other canine handler that was charged with the assault?

22 A. Nick Pearce.

23 Q. Did you have anything to do with that

24 assault?

25 A. Nope.

<p style="text-align: right;">Page 21</p> <p>1 Q. Why do you think that Chief Brown lumped you</p> <p>2 in together?</p> <p>3 MS. NICHOLS: Objection, calls for speculation.</p> <p>4 THE WITNESS: I have no idea why he would. That</p> <p>5 would be a question for him.</p> <p>6 Q. (BY MR. LUTZ) Was that the only incident with</p> <p>7 Chief Brown that was part of your motivation to leave</p> <p>8 the department?</p> <p>9 A. There were many others, but that was the</p> <p>10 final straw.</p> <p>11 Q. Can you tell me about any of the others?</p> <p>12 A. I don't remember any of them specifically.</p> <p>13 It was conglomerate of several things over, but very</p> <p>14 similar circumstances. He would, you know, say hey,</p> <p>15 you're doing a great job and then turn around and</p> <p>16 bad-mouth you right after, so got tired of it.</p> <p>17 Q. Was Chief Brown the acting police chief your</p> <p>18 entire time with SLPD?</p> <p>19 A. No. We had -- I had one other police chief</p> <p>20 and he left, and then Brown became interim, and then</p> <p>21 the permanent chief.</p> <p>22 Q. Who was the previous chief?</p> <p>23 A. Burbank.</p> <p>24 Q. And from your perspective, did the department</p> <p>25 change in any way when Chief Brown took control?</p>	<p style="text-align: right;">Page 23</p> <p>1 That sergeant -- essentially there's two different</p> <p>2 lieutenants they can report to. The on-duty lieutenant</p> <p>3 which is called watch commander. And then at the time</p> <p>4 the city was broken up to an east and west division,</p> <p>5 you had -- the west was called the Pioneer Precinct,</p> <p>6 you had a Pioneer lieutenant, and then the east is the</p> <p>7 Liberty Precinct and then you had the Liberty</p> <p>8 lieutenant.</p> <p>9 Above them were captains respectively over</p> <p>10 each side of town and then you had a -- they changed it</p> <p>11 a couple times, how they worded it, but then you had</p> <p>12 like a deputy chief that was over like the patrol</p> <p>13 bureau and then you had a deputy chief like over the</p> <p>14 investigations bureau. And then above that was the</p> <p>15 assistant chief and then the chief.</p> <p>16 Q. Okay. Thank you. What is the relationship</p> <p>17 between the Unified Police Department and the SLPD?</p> <p>18 MS. NICHOLS: Objection, vague.</p> <p>19 Q. (BY MR. LUTZ) Let me give you some context.</p> <p>20 So in the investigation of the Harmon matter, for</p> <p>21 example, which is the only investigation I've ever</p> <p>22 looked into involving the SLPD, the Unified Police</p> <p>23 Department appears to have carried out a lot of</p> <p>24 investigation, basically.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 22</p> <p>1 MS. NICHOLS: Objection, vague.</p> <p>2 THE WITNESS: Yes and no. I mean fundamentally it</p> <p>3 was the same. I would say it was -- it'd probably be a</p> <p>4 little bit worse just from the lack of support from the</p> <p>5 administration after Brown took over.</p> <p>6 Q. (BY MR. LUTZ) It sounds like you're sort of</p> <p>7 talking about a cultural change. Is there any truth to</p> <p>8 that from your perspective?</p> <p>9 A. I guess you could say that, but yeah, you</p> <p>10 know, a cultural change, and we had -- when Mike Brown</p> <p>11 took over, there was large amounts of officers that</p> <p>12 left and I just don't think he knew how to handle it</p> <p>13 appropriately.</p> <p>14 Q. Did you have any previous experience with</p> <p>15 Mike Brown before he became chief?</p> <p>16 A. I think he was -- I can't remember if he was</p> <p>17 captain or deputy chief before that. I don't remember</p> <p>18 his exact position.</p> <p>19 Q. Was he ever your supervisor?</p> <p>20 A. Not directly, no.</p> <p>21 Q. Speaking of that, can we go back and just</p> <p>22 have you help me with something fundamental. I'm sure</p> <p>23 this is on the org chart, but can you describe for me</p> <p>24 how the supervisory structure works?</p> <p>25 A. So your patrol officers report to a sergeant.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. A lot of interviews, a lot of the crime scene</p> <p>2 processing, and so I'm just wondering is that standard</p> <p>3 procedure that -- is there a contractual relationship?</p> <p>4 A. So the way that Utah operates is that any</p> <p>5 time that there's a critical incident like this case</p> <p>6 that me working for Salt Lake City cannot investigate</p> <p>7 it, you know, for obvious reasons. So the county has</p> <p>8 an agreement that if one agency is involved, then they</p> <p>9 get -- they get another agency to do the formal</p> <p>10 investigation of it.</p> <p>11 And as far as I understand it, it's kind of</p> <p>12 like a rotation, so all of the major agencies, West</p> <p>13 Valley, Unified Police Department, Salt Lake City, and</p> <p>14 they're -- as one of these incidents occurs, whoever is</p> <p>15 on top of that list is the agency that comes in and</p> <p>16 investigates it unless it involves that agency. Then</p> <p>17 one of the other ones will come in and do it.</p> <p>18 Q. Okay. Thank you. That's helpful.</p> <p>19 Do you know what their geographic</p> <p>20 jurisdiction is; UPDs?</p> <p>21 A. The County of Salt Lake.</p> <p>22 Q. Okay. So while Salt Lake City's limited to</p> <p>23 the city limits, Unified is --</p> <p>24 A. Correct.</p> <p>25 Q. -- just like a sheriffs department?</p>

<p style="text-align: right;">Page 25</p> <p>1 A. Yeah. So they used to be the Salt Lake City 2 Sheriffs Office and then eight, ten years ago they 3 separated from the sheriffs office and created their 4 own police department. 5 Q. Okay. Do you know why? 6 A. Money. I think that was the biggest factor. 7 The sheriff at the time was trying to get more funding 8 for everything and the county council at the time 9 wasn't giving him any sort of funding, and so he pushed 10 to separate the sheriffs office and create the Unified 11 Police Department so that they could get more funding. 12 Q. Okay. Is the sheriff elected? 13 A. Yes. 14 Q. What was the highest rank that you attained 15 at the Salt Lake City Police Department? 16 A. Officer. 17 Q. And what year did you say you moved on? 18 2020? 19 A. 2020. 20 Q. Where are you now? 21 A. Weber County Sheriffs Office. 22 Q. Where about is that? 23 A. North of here probably 40 miles, 50 miles. 24 Q. And what's your position? 25 A. I'm a corporal.</p>	<p style="text-align: right;">Page 27</p> <p>1 through what an average day looked like. 2 A. Average day would be we'd attend briefing. 3 If we -- oftentimes we'd get assigned different tasks. 4 If they had a transient camp that popped up in one of 5 the parks or something, we would be tagged to go down, 6 make contact with the transients, try and get them to, 7 you know, get involved with the different resources 8 that are available to them, and then potentially look 9 for any sort of criminal violations and address those 10 as needed. 11 If we didn't get assigned a specific task 12 like that, then we'd get on our bikes and we'd ride to 13 Liberty Park or we'd ride to Sugar House Park or we'd 14 go up to the east bench along all the bike trails and 15 we would just patrol those areas until otherwise 16 needed. 17 Q. Being on the bikes, what would you do if you 18 needed to make an arrest? 19 A. Call for patrol to assist. If we were close 20 enough, let's say -- typically we would drive our cars 21 with our bikes. Let's say we went to Liberty Park. We 22 would park our cars at Liberty Park and then we'd ride. 23 And then if we made an arrest that needed us to take 24 somebody to jail, then one of our bike patrol guys 25 would go back and get his vehicle, drive it over, and</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. How are you liking it? 2 MS. NICHOLS: Objection, vague. 3 THE WITNESS: It's different. 4 MR. LUTZ: Too late. 5 THE WITNESS: It's different. It's not as busy as 6 Salt Lake, but it's -- it's much more mellow up there. 7 Q. (BY MR. LUTZ) So I imagine Salt Lake City is 8 the busiest highest volume law enforcement agency in 9 the state. Do you think that's right? 10 A. One of them. 11 Q. You probably worked in the most intense 12 environment here? 13 A. Yeah, I would say between Salt Lake, West 14 Valley City and Ogden City, they're all pretty similar 15 call volume wise and for the types of incidents that 16 they have to deal with. 17 Q. Do you have any plans to return here? 18 A. Not at the moment. 19 Q. And when you were an officer here, did you 20 live in the city? 21 A. No. 22 Q. Where were you living? 23 A. The south end of Salt Lake County. 24 Q. Going back to your time as an officer here, I 25 guess starting with bike patrol, can you walk me</p>	<p style="text-align: right;">Page 28</p> <p>1 then we would get in ours. But if we were up -- if we 2 went from Liberty Park to Sugar House Park and then 3 down, you know, up towards Foothill and our cars were 4 still at Liberty Park, we would call for patrol to come 5 and help us with the transport to the jail and we would 6 just meet that officer at the jail. 7 Q. Okay. Did you have a partner while you were 8 in bike patrol? 9 A. We didn't have assigned partners, but 10 typically we always made sure that we were riding in 11 pairs. 12 Q. In an average week in the bike patrol, how 13 many arrests were you making on average? 14 A. Custodial arrests or citations? 15 Q. I suppose first one, then the other. 16 A. Custodial arrests maybe -- maybe two or three 17 in a week. Citations daily. You know, it really 18 depends on -- depended on the volume of who's in the 19 park and what we were dealing with that day, so I don't 20 know an exact number for that. 21 Q. Sure. Yeah, I'm just trying to get a general 22 kind of understanding. What sort of things were you 23 citing folks for? 24 A. Trespassing, smoking in the park, possession 25 of narcotics, drug paraphernalia, open containers,</p>

<p style="text-align: right;">Page 29</p> <p>1 minors in possession of alcohol. Yeah, a lot.</p> <p>2 Q. So in 2017 you were not on the bike patrol</p> <p>3 and not on canine patrol; right?</p> <p>4 A. Correct.</p> <p>5 Q. What was that position or capacity called?</p> <p>6 A. Patrol Officer.</p> <p>7 Q. Can you walk me through an average day as a</p> <p>8 patrol officer.</p> <p>9 A. Again, go to -- go to briefing. We would</p> <p>10 receive any sort of information from the previous shift</p> <p>11 from our supervisors. And then there was always calls</p> <p>12 pending and the sergeant would kind of direct us and</p> <p>13 say let's take care of this specific call, whatever it</p> <p>14 was, it's been holding a long time. You know, whosever</p> <p>15 area that is, I need you to go to that one first. And</p> <p>16 then he'd release us from briefing and we'd start</p> <p>17 handling all the calls for service.</p> <p>18 Q. Who was your sergeant at that time?</p> <p>19 A. Sergeant Hatch.</p> <p>20 Q. And was that your supervising sergeant? Was</p> <p>21 he your supervising sergeant the entire time that you</p> <p>22 were in that patrol capacity?</p> <p>23 A. No.</p> <p>24 Q. How many times did that person change?</p> <p>25 A. Pretty much every bid. So we would -- we</p>	<p style="text-align: right;">Page 31</p> <p>1 to kind of guide you on how to essentially be a police</p> <p>2 officer.</p> <p>3 Q. In the training academy did they train you on</p> <p>4 the policies contained in the police department</p> <p>5 handbook?</p> <p>6 A. Yes.</p> <p>7 Q. All of them?</p> <p>8 A. I would like to say they trained us on all of</p> <p>9 them, but they kind of gave us the policies and said</p> <p>10 you need to know these, read them, and that was pretty</p> <p>11 much it.</p> <p>12 Q. Have you read the SLCPD policy manual?</p> <p>13 A. The majority of it.</p> <p>14 Q. Did you review it periodically?</p> <p>15 A. Every so often, yeah. They would give out --</p> <p>16 they would say hey, this policy is changing and so they</p> <p>17 would push out, send out an email saying, you know, you</p> <p>18 need to acknowledge this policy that it's changed. And</p> <p>19 so the program that they used you could compare the old</p> <p>20 policy to the new policy and see the changes, so you'd</p> <p>21 go through and see what changed and then click that you</p> <p>22 acknowledge that the policy has been changed.</p> <p>23 Q. In their training database, I assume?</p> <p>24 A. Yeah.</p> <p>25 Q. So I'm assuming that they trained on use of</p>
<p style="text-align: right;">Page 30</p> <p>1 would bid for our shifts every four months and most</p> <p>2 often it was a new sergeant every single four months.</p> <p>3 Q. Okay. That's a lot.</p> <p>4 A. Yeah.</p> <p>5 Q. Taking a step back, did you attend training</p> <p>6 academy with Salt Lake City Police Department?</p> <p>7 A. Yes.</p> <p>8 Q. When was that?</p> <p>9 A. That would be 2014.</p> <p>10 Q. What did that entail?</p> <p>11 A. A lot of class time, a lot of scenario</p> <p>12 training, a lot -- a lot that you can't really detail.</p> <p>13 Q. How long does the whole training academy</p> <p>14 process take?</p> <p>15 A. The entire academy I think is like six</p> <p>16 months. After you complete the academy, then you're</p> <p>17 assigned to a field training program and the field</p> <p>18 training program is about another four months, four to</p> <p>19 five months.</p> <p>20 Q. And what exactly is the field training</p> <p>21 program?</p> <p>22 A. Well, you're assigned a senior officer and</p> <p>23 that senior officer's sole job is to ride with you and</p> <p>24 essentially teach you the correct ways to do it to make</p> <p>25 sure that you're not doing things inappropriately and</p>	<p style="text-align: right;">Page 32</p> <p>1 force --</p> <p>2 A. Yes.</p> <p>3 Q. -- is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Can you tell me what the training looks like</p> <p>6 on use of force?</p> <p>7 A. In what regards, because there's everything</p> <p>8 from, you know, defensive tactics to, you know, proper</p> <p>9 positioning, to different arrest control techniques to</p> <p>10 all the way up and including, you know, deadly force</p> <p>11 and . . .</p> <p>12 Q. What is your understanding of what the policy</p> <p>13 says -- what the Salt Lake City Police Department's</p> <p>14 policy says about reasonable force?</p> <p>15 MS. NICHOLS: Objection, foundation.</p> <p>16 THE WITNESS: Okay. So I don't understand your</p> <p>17 question.</p> <p>18 Q. (BY MR. LUTZ) I may have to go back and</p> <p>19 unpack this a little bit. So there's a policy about --</p> <p>20 or there's many policies about use of force --</p> <p>21 A. Correct.</p> <p>22 Q. -- in the policy manual. And is there a</p> <p>23 prohibition against unreasonable or excessive force?</p> <p>24 A. Yes.</p> <p>25 Q. According to the policy, what is unreasonable</p>

<p style="text-align: right;">Page 33</p> <p>1 or excessive force?</p> <p>2 MS. NICHOLS: And I'm just going to object to the</p> <p>3 extent that you're asking him to remember exactly what</p> <p>4 the policy says and if you have it, we can take a look</p> <p>5 at it.</p> <p>6 But you can answer to the best of your</p> <p>7 recollection.</p> <p>8 THE WITNESS: Honestly, I don't recall what their</p> <p>9 policy says. I would imagine that it's in regards to</p> <p>10 excessive or unreasonable use of force. I do remember</p> <p>11 that it -- other officers, if they see something that</p> <p>12 they consider is unreasonable or excessive, they have</p> <p>13 the duty to intervene, but I don't recall the exact</p> <p>14 language that's written into the policy.</p> <p>15 Q. (BY MR. LUTZ) Were there any guidelines in</p> <p>16 the policy as to what things should be considered</p> <p>17 excessive or unreasonable?</p> <p>18 MS. NICHOLS: Same objection.</p> <p>19 THE WITNESS: Not that I recall. I know most of</p> <p>20 the policy is based on Graham vs. Connor and they don't</p> <p>21 go through and list a specific item for what they would</p> <p>22 deem as excessive in the specific policy.</p> <p>23 Q. (BY MR. LUTZ) So there are no specific</p> <p>24 situations detailed in the policy?</p> <p>25 A. No, not that I remember.</p>	<p style="text-align: right;">Page 35</p> <p>1 know, we would be given the scenario and based off of</p> <p>2 what the role player's response was to our stimulus,</p> <p>3 then we would have to take that necessary action,</p> <p>4 whatever it may be, whether it's simply putting</p> <p>5 handcuffs on somebody or if it becomes a force on force</p> <p>6 scenario to try and recognize that and deal with that</p> <p>7 appropriately.</p> <p>8 Q. What is force on force?</p> <p>9 A. So, like, if somebody points a gun at you,</p> <p>10 they don't necessarily want you pulling out a baton to</p> <p>11 try and take them into custody. They want you to</p> <p>12 protect yourself and those around you and use your</p> <p>13 weapon the same as -- as they are because if somebody's</p> <p>14 trying to kill you, then you have the ability to defend</p> <p>15 yourself.</p> <p>16 Q. I see. Were you trained on -- scratch that.</p> <p>17 It sounds like there was some sort of</p> <p>18 proportionality factor --</p> <p>19 A. Sure.</p> <p>20 Q. -- in your training. Is it the higher the</p> <p>21 threat, the higher -- the more reasonable it is to use</p> <p>22 a greater degree of force? Is that accurate?</p> <p>23 A. Yes.</p> <p>24 Q. And in what circumstance can an SLCPD officer</p> <p>25 use deadly force?</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. And you said you were -- they're based on the</p> <p>2 factors in Graham v. Connor?</p> <p>3 A. Correct.</p> <p>4 Q. Were you trained on the Graham factors?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember what they are?</p> <p>7 A. So the type of the crime that is alleged to</p> <p>8 be committed and then the security -- not security, but</p> <p>9 the threat to either the officer or the general public,</p> <p>10 and then the individual has to be actively resisting</p> <p>11 attempts to be taken into custody.</p> <p>12 Q. Okay. In your role now, are there policies</p> <p>13 regarding unreasonable force?</p> <p>14 A. Yes.</p> <p>15 Q. Are they substantially different than the</p> <p>16 policies that were implemented with the SLCPD?</p> <p>17 A. I would say they're pretty similar. I</p> <p>18 haven't compared the verbiage word for word, but</p> <p>19 fundamentally I would say they're the exact same.</p> <p>20 Q. Okay. What training did you receive at SLCPD</p> <p>21 regarding how to make decisions as to what is</p> <p>22 appropriate force in a given situation?</p> <p>23 A. In all of the defensive tactics, all the</p> <p>24 arrest techniques. They put us through a lot of, for</p> <p>25 lack of a better term, live action scenarios where, you</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I would say that they can use it in any -- at</p> <p>2 any time that they are -- they're in significant fear</p> <p>3 for themselves, that their life is either about to end</p> <p>4 or be seriously injured, or in the defense of others,</p> <p>5 other officers, other -- the public, with those same</p> <p>6 standards.</p> <p>7 Q. Have you ever had to employ deadly force?</p> <p>8 A. No.</p> <p>9 Q. While you were working as an officer with</p> <p>10 SLCPD, what kind of gear were you carrying?</p> <p>11 A. On my vest and duty belt or?</p> <p>12 Q. Yes.</p> <p>13 A. Obviously my service pistol, I had a taser,</p> <p>14 OC spray, handcuffs, and a first aid kit. Pens, paper.</p> <p>15 Q. Did you have a baton?</p> <p>16 A. I had one issued to me. I didn't carry it</p> <p>17 most of the time because the policy was you either had</p> <p>18 to have your -- you had to have one less than lethal</p> <p>19 option and that was either -- or excuse me two. You</p> <p>20 had taser, OC, or your baton. You had to have two of</p> <p>21 those three somewhere on you, and typically I did not</p> <p>22 carry my baton.</p> <p>23 Q. Because you carried the taser instead?</p> <p>24 A. I carried a taser and my OC spray.</p> <p>25 Q. On what side of your body was your service</p>

<p style="text-align: right;">Page 37</p> <p>1 weapon?</p> <p>2 A. Right side.</p> <p>3 Q. And your taser?</p> <p>4 A. It was also on the right side.</p> <p>5 Q. Is that how most officers arrange that</p> <p>6 equipment?</p> <p>7 A. It varies by officer. So mine deliberately</p> <p>8 was set on my right side so that if I was making that</p> <p>9 conscious decision to retrieve my taser, I had to do it</p> <p>10 with my nondominant hand, my left hand, and produce it</p> <p>11 that way and use it that way. That way there was --</p> <p>12 for me in my head there was a distinction between I'm</p> <p>13 pulling my pistol or I'm pulling my taser.</p> <p>14 Q. Based on the direction you had to reach</p> <p>15 across your body?</p> <p>16 A. Correct.</p> <p>17 Q. Was it important to you to be able to access</p> <p>18 your service weapon more quickly than your taser?</p> <p>19 A. Yes.</p> <p>20 Q. Did you see that among other officers as</p> <p>21 well?</p> <p>22 A. That they wanted to access their pistol or</p> <p>23 their taser or -- I don't quite understand what you're</p> <p>24 asking.</p> <p>25 Q. Other officers employing the same sort of</p>	<p style="text-align: right;">Page 39</p> <p>1 the taser you carried?</p> <p>2 A. I don't remember the model. I know that it's</p> <p>3 a taser brand. I think it's Taser International is the</p> <p>4 company. I don't remember exactly.</p> <p>5 Q. I'm going to hand you a document here which I</p> <p>6 think we'll mark as Exhibit 1.</p> <p>7 (Exhibit 1 marked.)</p> <p>8 Q. (BY MR. LUTZ) Okay. So Exhibit 1 is labeled</p> <p>9 Taser at the top. It's the user manual for the taser</p> <p>10 X26P CEW. Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Does that model number look familiar to you?</p> <p>13 A. Yes.</p> <p>14 Q. And the image of the taser on the front of</p> <p>15 the manual?</p> <p>16 A. Yes.</p> <p>17 Q. Do you believe that this was the brand and</p> <p>18 model of the taser that you carried?</p> <p>19 A. It looks like it.</p> <p>20 Q. Okay. Can you walk me through how the X26P</p> <p>21 works?</p> <p>22 MS. NICHOLS: Objection, vague and calls for a</p> <p>23 narrative.</p> <p>24 THE WITNESS: In regards to?</p> <p>25 Q. (BY MR. LUTZ) Suppose you have a suspect.</p>
<p style="text-align: right;">Page 38</p> <p>1 thinking and arranging those on their bodies and that</p> <p>2 the service pistol would be easier to draw closer to</p> <p>3 the dominant hand than the nonlethal action like the</p> <p>4 taser.</p> <p>5 MS. NICHOLS: Objection, calls for speculation.</p> <p>6 Q. (BY MR. LUTZ) I'm asking if you saw that</p> <p>7 among other officers?</p> <p>8 A. I would say that it would be unwise to not</p> <p>9 put your pistol next to your dominant hand. Nobody --</p> <p>10 there's not any officer out there that's going to cross</p> <p>11 draw their pistol from their weak side, their</p> <p>12 nondominant side. So I would say almost everybody has</p> <p>13 their service weapon on their dominant side, so whether</p> <p>14 it's right or left.</p> <p>15 Q. So basically placed directly below the</p> <p>16 dominant hand?</p> <p>17 A. Yeah, depending on where they position. Some</p> <p>18 position a little bit forward, some position a little</p> <p>19 bit backwards.</p> <p>20 Q. Correct.</p> <p>21 A. But somewhere close to their dominant hand,</p> <p>22 yes.</p> <p>23 Q. Okay. Thank you.</p> <p>24 Can we talk a little bit about -- a little</p> <p>25 more about tasers. Do you recall the model or brand of</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Okay.</p> <p>2 Q. We can --</p> <p>3 A. Sure.</p> <p>4 Q. -- so we can nail it down better.</p> <p>5 You have a suspect, you've determined there's</p> <p>6 some need to use force, you've elected to go with the</p> <p>7 nonlethal taser. How does this work? Does it -- do</p> <p>8 you fire it at a suspect? Do you use the stun drive on</p> <p>9 them? Can you do both?</p> <p>10 A. So the short answer is yes, you can fire it</p> <p>11 and you can also drive stun somebody. When you fire</p> <p>12 it, it produces two different probes. The probes have</p> <p>13 to make contact with the individual's body to complete</p> <p>14 a circuit. If one of those probes does not contact</p> <p>15 with the individual, then the circuit is not closed and</p> <p>16 the taser has absolutely no effect.</p> <p>17 The way around that is if you have one probe</p> <p>18 in the individual, then you can take the physical taser</p> <p>19 and on the end of the taser there's two little, I don't</p> <p>20 know what they're called, but they're little metal</p> <p>21 connectors that you then can touch it on the lower</p> <p>22 portion of the individual's body, or on the opposite</p> <p>23 end of wherever that other connected probe is, and</p> <p>24 deploy the trigger again and then that will close that</p> <p>25 circuit causing the desired incapacitation effect.</p>

<p style="text-align: right;">Page 41</p> <p>1 Q. And what you're talking about there when</p> <p>2 you're touching the actual pistol shape of the taser to</p> <p>3 the subject's body, is that called the drive stun</p> <p>4 function?</p> <p>5 A. Yes.</p> <p>6 Q. Can you use the drive stun function even if</p> <p>7 you haven't deployed the prong function?</p> <p>8 A. Yes, you can, but that requires you to remove</p> <p>9 the cartridge and then apply the taser to use the drive</p> <p>10 stun. If you still have the cartridge in, as soon as</p> <p>11 you pull the trigger, the probes are going to go out</p> <p>12 and so you can't -- if I try to -- tried to drive stun</p> <p>13 her with that cartridge, then it's going to shoot both</p> <p>14 of those probes in first and then do the drive stun</p> <p>15 function.</p> <p>16 Q. The record should reflect --</p> <p>17 A. My attorney.</p> <p>18 Q. -- the gesture is towards Ms. Nichols.</p> <p>19 A. She was the closest individual.</p> <p>20 MS. NICHOLS: I don't know how I feel about that.</p> <p>21 Q. (BY MR. LUTZ) And as a clarification, when</p> <p>22 you say the cartridge --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- does that refer to the tip of the taser</p> <p>25 that contains the prongs?</p>	<p style="text-align: right;">Page 43</p> <p>1 the taser?</p> <p>2 A. Correct. So the way that the taser functions</p> <p>3 is that I deploy the trigger, it gives five seconds</p> <p>4 that it runs its cycle. After that five seconds, it</p> <p>5 shuts off. If the probes are still connected and --</p> <p>6 you can pull the trigger again and it'll run an</p> <p>7 additional five seconds. If you hold the trigger down,</p> <p>8 it will run in continuous and it won't stop that cycle</p> <p>9 unless you loose the trigger.</p> <p>10 Q. Have you ever received training on what the</p> <p>11 appropriate duration is with a suspect?</p> <p>12 A. Again, it goes back to, you know, that</p> <p>13 reasonable. It's all going to be -- we're taught that</p> <p>14 it's going to be dependent on that specific set of</p> <p>15 facts in that scenario, but we're also taught that if I</p> <p>16 have to tase somebody four and five times, then I'm</p> <p>17 probably using the wrong tool because if it's not being</p> <p>18 effective, then why are we going to continue to use the</p> <p>19 same thing over and over and over again when it's not</p> <p>20 being effective. We need to look for other options at</p> <p>21 that point.</p> <p>22 Q. I see. Broadly, what is the purpose of the</p> <p>23 taser?</p> <p>24 A. Broadly it is to incapacitate an individual</p> <p>25 so that we can take them into custody without having to</p>
<p style="text-align: right;">Page 42</p> <p>1 A. Correct, it does.</p> <p>2 Q. And how many of those are there?</p> <p>3 A. The prongs or the cartridges?</p> <p>4 Q. The cartridges.</p> <p>5 A. Only one.</p> <p>6 Q. Are they single use?</p> <p>7 A. Single use.</p> <p>8 Q. Did you carry additional cartridges?</p> <p>9 A. Not on my person.</p> <p>10 Q. But it is reloadable?</p> <p>11 A. Yes.</p> <p>12 Q. And to your knowledge -- let me try to phrase</p> <p>13 this correctly. Does the taser itself maintain a</p> <p>14 record of when and how it's used?</p> <p>15 A. Yes.</p> <p>16 Q. Is that called anything in particular?</p> <p>17 A. I know when they -- I don't know if it has a</p> <p>18 specific name, but after any time that we -- for Salt</p> <p>19 Lake City after any time that we used it, used the</p> <p>20 taser, it required they called it a download. They had</p> <p>21 to download all the data from that taser, and it gives</p> <p>22 them the duration. I believe it gives them the date</p> <p>23 and the time that it was used as well and for how long.</p> <p>24 Q. And when you say duration, to clarify, are we</p> <p>25 talking about how long the current is being issued from</p>	<p style="text-align: right;">Page 44</p> <p>1 fight them, you know, and prevent -- prevent injury to</p> <p>2 them and prevent injury to the officers involved.</p> <p>3 Q. This may seem basic, but can you explain what</p> <p>4 you mean by incapacitate?</p> <p>5 A. Make them unable to move. The way that the</p> <p>6 taser's designed is to -- it produces an electrical</p> <p>7 current that causes motor dysfunction in the person's</p> <p>8 body and makes it to where they are unable to</p> <p>9 physically move their -- their extremities allowing us,</p> <p>10 as the officers, to step in and move those extremities</p> <p>11 for them and put them in handcuffs.</p> <p>12 Q. Okay. Can you turn to page 4 of Exhibit 1.</p> <p>13 A. (Witness complies.)</p> <p>14 4, okay.</p> <p>15 Q. You see here in the middle of the page it</p> <p>16 describes what it's calling neuromuscular</p> <p>17 incapacitation?</p> <p>18 A. Okay.</p> <p>19 Q. Is that what we're talking about?</p> <p>20 A. Yes.</p> <p>21 Q. And in the manual in the description of the</p> <p>22 impact of neuromuscular incapacitation it says that</p> <p>23 "Neuromuscular incapacitation occurs when a CEW is able</p> <p>24 to cause involuntary stimulation of both sensory nerves</p> <p>25 and the motor nerves. It's not dependent on pain and</p>

<p style="text-align: right;">Page 45</p> <p>1 can be effective on subjects with a high level of pain</p> <p>2 tolerance."</p> <p>3 Going further down it says "A subject with a</p> <p>4 very high tolerance of pain, e.g., a drug abuser, a</p> <p>5 person with serious psychological distress, or a</p> <p>6 trained focus fighter may not being affected by pain or</p> <p>7 might be able to fight through the pain of a</p> <p>8 traditional stun gun."</p> <p>9 Is that all accurate to you?</p> <p>10 A. In my experience, yes.</p> <p>11 Q. Okay. Hypothetically using a taser against a</p> <p>12 suspect with a weapon, would the incapacitation</p> <p>13 produced by a taser limit their ability to use that</p> <p>14 weapon?</p> <p>15 MS. NICHOLS: Objection, calls for speculation.</p> <p>16 THE WITNESS: In a hypothetical it should, but</p> <p>17 it's also my experience that tasers fail more often</p> <p>18 than they are successful.</p> <p>19 Q. (BY MR. LUTZ) Okay. Let's talk about that.</p> <p>20 How many times have you deployed your taser against a</p> <p>21 suspect?</p> <p>22 A. When I was with Salt Lake, probably six to</p> <p>23 eight times. I don't remember an exact number.</p> <p>24 Q. And what about in your other law enforcement?</p> <p>25 A. In Weber, once.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Were you ever trained on the appropriate</p> <p>2 distance for considering using the taser as an option?</p> <p>3 A. I don't recall anything specific about it,</p> <p>4 but I would image, you know, they went over something</p> <p>5 to the extent of anything over 30 feet, you're not</p> <p>6 going to get a good connection.</p> <p>7 Q. Right.</p> <p>8 A. The other consideration is that both prongs</p> <p>9 do not fire straight. The lower prong is at an angle</p> <p>10 and so the further you are away from that subject, then</p> <p>11 the more likelihood that the prong is going to hit the</p> <p>12 ground before it gets to the subject.</p> <p>13 Q. Okay. Going back to page 4 of the exhibit,</p> <p>14 we have this little illustration under Neuromuscular</p> <p>15 Incapacitation and we can see here that these lines</p> <p>16 represent presumably the prongs.</p> <p>17 A. Yes.</p> <p>18 Q. Is that what you're describing, this</p> <p>19 expanding angle --</p> <p>20 A. Yes, correct.</p> <p>21 Q. -- between the prongs as the distance</p> <p>22 increases?</p> <p>23 A. Right, because the desired effect -- to</p> <p>24 obtain the desired effect for the taser, you have to</p> <p>25 incapacitate large muscle groups. So meaning that if I</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. Okay. Any other times?</p> <p>2 A. No.</p> <p>3 Q. So approximately nine times. How many times</p> <p>4 would you say it failed?</p> <p>5 A. About half of those.</p> <p>6 Q. Can we talk through those?</p> <p>7 A. I don't remember the majority of them, but I</p> <p>8 would say, um I can tell you that the times that they</p> <p>9 did fail it was -- the individuals were either</p> <p>10 incredibly intoxicated off of some sort of narcotic or</p> <p>11 alcohol and/or had ultra excessive baggy clothing.</p> <p>12 Q. Okay. Are any of the failures that you're</p> <p>13 describing the result of one of the prongs missing the</p> <p>14 target?</p> <p>15 A. I did have one that the prongs missed, yes.</p> <p>16 And he was -- he was a subject that was running from me</p> <p>17 and I fired, and he decided he wanted to turn at the</p> <p>18 same time, and only one of the probes connected.</p> <p>19 Q. What's the range on the probes?</p> <p>20 A. It depends on the cartridge. There's some</p> <p>21 cartridges that have 15 feet and there's others that</p> <p>22 have 30 feet.</p> <p>23 Q. What did you carry?</p> <p>24 A. I think the ones Salt Lake issued were the</p> <p>25 ones at 30 feet.</p>	<p style="text-align: right;">Page 48</p> <p>1 deploy the taser and both prongs go in, but I only have</p> <p>2 like a two to three-inch separation between those</p> <p>3 prongs, I'm only going to get incapacitation in those</p> <p>4 two to three inches which is going to be painful, but</p> <p>5 it's not going to do that desired effect.</p> <p>6 So what I'm looking for as far as</p> <p>7 incapacitation is the first prong to go into one</p> <p>8 location and the further, the wider I can get two,</p> <p>9 three feet apart from that second prong is going to</p> <p>10 allow a wider group of muscles to be affected,</p> <p>11 therefore, in essence, making that taser more</p> <p>12 effective.</p> <p>13 Q. So, ideally, something like one prong in the</p> <p>14 chest, one prong in the thigh?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know what CEW stands for?</p> <p>17 A. It is controlled electronic something or</p> <p>18 other. I don't remember. It's their nice way of</p> <p>19 saying taser instead of -- because there's more than</p> <p>20 one brand of taser. Taser International owns the word</p> <p>21 taser and so they're like controlled or conducted</p> <p>22 energy weapons or something like that is what they're</p> <p>23 actually called.</p> <p>24 Q. Okay. You can put Exhibit 1 away.</p> <p>25 A. Okay.</p>

<p style="text-align: right;">Page 49</p> <p>1 MS. NICHOLS: We've been going a little over an</p> <p>2 hour. Can we take a break soon?</p> <p>3 MR. LUTZ: Yeah. Absolutely. Why don't we stop</p> <p>4 and come back.</p> <p>5 MS. NICHOLS: Great. Thanks.</p> <p>6 (Recess taken from 10:10 a.m. to 10:24 a.m.)</p> <p>7 Q. (BY MR. LUTZ) Okay. So we just got done</p> <p>8 talking about tasers and their implementation and you</p> <p>9 had mentioned earlier that you have never had to use</p> <p>10 delayed force on the job.</p> <p>11 A. Correct.</p> <p>12 Q. Have you ever had to discharge your service</p> <p>13 weapon?</p> <p>14 A. Only for putting down animals.</p> <p>15 Q. How many times has that occurred?</p> <p>16 A. Now that I'm in Weber, fairly often, but in</p> <p>17 Salt Lake, I never had to put an animal down in Salt</p> <p>18 Lake.</p> <p>19 Q. Did you otherwise have to draw your service</p> <p>20 weapon?</p> <p>21 A. Yes.</p> <p>22 Q. How many times?</p> <p>23 A. Too many. Fairly regularly, especially when</p> <p>24 I went to the canine squad. But starting out in</p> <p>25 patrol, probably not nightly, but the further I got in</p>	<p style="text-align: right;">Page 51</p> <p>1 somebody called 911 and then hung up. That same</p> <p>2 individual texted her friend and said help me, he's</p> <p>3 going to kill me, so the friend also called in and said</p> <p>4 my friend sent me this text message. And he -- she</p> <p>5 didn't know the address, so we had to -- we were given</p> <p>6 a -- every time you call 911, it gives you a geo</p> <p>7 location, but it gives a range.</p> <p>8 So we get the range and it was like a</p> <p>9 thousand meters, so we showed up and we were just kind</p> <p>10 of wandering through the apartment complexes trying to</p> <p>11 hear as they were working on additional information.</p> <p>12 One of the other officers found it, found the</p> <p>13 apartment, heard a struggle, breached the window, and</p> <p>14 saw an individual strangling his girlfriend.</p> <p>15 He drew his pistol, gave her -- gave him</p> <p>16 command to let her go, he did, he retreated, and then</p> <p>17 came back around the corner, shot his girlfriend, and</p> <p>18 then started shooting at officers, and they exchanged</p> <p>19 gun fire with each other.</p> <p>20 Q. Was the suspect hit?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know if they lived?</p> <p>23 A. He did. Yeah, he did.</p> <p>24 Q. Were any of the officers hit?</p> <p>25 A. One.</p>
<p style="text-align: right;">Page 50</p> <p>1 my career, the more I used it with felony stops with</p> <p>2 stolen vehicles and burglars and things like that</p> <p>3 fairly regularly.</p> <p>4 Q. Would you say hundreds of times?</p> <p>5 A. Yeah.</p> <p>6 Q. And for a felony stop in particular, would</p> <p>7 that be standard procedure? If you had a felon who</p> <p>8 stole a vehicle, you'd draw a weapon?</p> <p>9 A. Yeah, absolutely, because it's -- because of</p> <p>10 the type of offense that you're using your -- you're</p> <p>11 pointing your service pistol at them and giving them</p> <p>12 commands to exit the car and taking them into custody.</p> <p>13 Just because of the high hazard that it presents.</p> <p>14 Q. Other than the case that we're discussing</p> <p>15 today, have you ever been present when another officer</p> <p>16 has discharged a firearm?</p> <p>17 A. Yes.</p> <p>18 Q. How many times?</p> <p>19 A. I'm trying to think of -- I think the</p> <p>20 majority of them I was there after the fact, but at</p> <p>21 least one other that I was there as he was discharging</p> <p>22 his firearm.</p> <p>23 Q. Do you recall what happened in that situation</p> <p>24 specifically?</p> <p>25 A. It was a 911 call that was abandoned, meaning</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And was that survived?</p> <p>2 A. Yeah, he was hit in the leg.</p> <p>3 Q. Do you recall who these other officers were?</p> <p>4 A. The officer that was shot was -- his name was</p> <p>5 Officer Miller and the one that was at the window with</p> <p>6 me was Officer Simpson.</p> <p>7 Q. Okay. And when about was this?</p> <p>8 A. 2020.</p> <p>9 Q. You mentioned that in that scenario the</p> <p>10 officer who was pointing his service weapon at the</p> <p>11 suspect was issuing commands for that suspect to drop</p> <p>12 his weapon. Is that procedure something that's</p> <p>13 prescribed by SLCPD policy?</p> <p>14 A. Again, I don't remember what the policy</p> <p>15 specifically states, but it's -- the language is</p> <p>16 somewhere along the lines of, you know, commands should</p> <p>17 be given, if prudent, to try to gain that suspect's</p> <p>18 compliance first. It doesn't -- it's not a shall, you</p> <p>19 know, always, because, again, you can't really plan for</p> <p>20 every single situation.</p> <p>21 Q. And so in some situations it's just not</p> <p>22 possible to issue a command?</p> <p>23 A. Correct.</p> <p>24 Q. What factors would affect your decision</p> <p>25 whether or not to issue a command prior to using your</p>

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1 service weapon on a suspect?

2 A. What the suspect is doing. His behavior
3 before, his behavior during, and whatever threat he
4 presents. You know, if we're going hypotheticals, I'm
5 on a traffic stop dealing with one individual and
6 another car stops and a gentleman jumps out, produces a
7 pistol and goes to point it at me.

8 I may not have enough time to appropriately
9 recognize that threat and give him a command. I may
10 only have enough time to recognize that's a gun, I'm
11 about to get shot, and draw my weapon and end that
12 threat before he's able to inflict harm to me or the
13 person that I'm on the traffic stop with.

14 Q. I see. Okay. Suppose you're in a situation
15 hypothetically where you did have the opportunity to
16 tell an armed suspect to drop their weapon and they
17 comply. What do you do next?

18 A. If they --

19 MS. NICHOLS: Sorry. Objection, calls for
20 speculation.

21 THE WITNESS: Again, dealing with a hypothetical,
22 the whole point of using force on somebody is to
23 determine their level of compliance. If they now
24 become compliant, then my level of force is going to
25 lower to the appropriate level of resistance that they

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1 are doing.

2 So in this scenario, if I somebody produces a
3 weapon, I challenge them, say hey, drop it, and they
4 do, I'm going to continue to keep my pistol on them
5 while I am going to give them additional commands to
6 either move away from the weapon, go into a prone
7 position where I lay them -- have them lay on the
8 ground, and then once they're on the ground, have
9 additional officers approach and then take them into
10 custody all while holding some sort of lethal coverage.

11 Q. (BY MR. LUTZ) What do you do with the weapon?

12 A. After the person's in custody, secure it and
13 take possession of it.

14 Q. Only after the person's in custody?

15 A. Correct. Because if he's -- we're going to
16 move him, try to remove him away from that -- that
17 item, whatever it is. If it's a gun or a knife or a
18 chainsaw, whatever, we're going to try to give him
19 commands to move away from it. If he doesn't, then as
20 we make that approach, an officer is going to have that
21 task to secure that weapon to make sure that he does
22 not have an opportunity to grab it again.

23 Now, in a perfect world we'd have, you know,
24 five, ten officers trying to take one person into
25 custody to eliminate any sort of contingency, you know,

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1 to have multiple contingencies going. Your job is
2 this, your job is this. But sometimes you're not
3 always able to secure that weapon until after that
4 individual is in custody.

5 Q. I think you alluded to it, but can you tell
6 me again why it's important to move a suspect away from
7 the weapon that they were previously holding?

8 A. So that they don't have an opportunity to
9 grab it and now pose a deadly threat again.

10 Q. And would that be the same reason that you
11 would secure the weapon in your own possession?

12 A. Yes.

13 Q. And is this procedure dictated by SLCPD
14 policy and training?

15 A. By policy, no. Again, the training is -- is
16 very broad and they can only, you know, we can only
17 train for so many scenarios because we don't know all
18 of the variables that go into each scenario, so they
19 try to give us as much information as they can and say
20 best practice is this. However, not every scenario is
21 going to fall within those best practice parameters.

22 Q. Sure. This particular scenario though is a
23 usual and recurring one, is it not?

24 MS. NICHOLS: Sorry. What particular scenario are
25 you talking about?

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1 MR. LUTZ: Where you've disarmed a suspect and
2 then you need to take the suspect into custody and/or
3 secure their weapon.

4 THE WITNESS: Again, you know, it's -- there's so
5 many other variables. I would not say that it's
6 normal. There are parts of it that are normal that,
7 you know, if that -- if we're unable to remove them
8 from that weapon, then we just kind of have to deal
9 with that and, you know, I may make an approach. I may
10 not be able to get him, he's not compliant, he's not
11 moving away from that weapon, but he's compliant enough
12 that I feel like we can take him into custody.

13 As we make that approach, me securing it may
14 be as much as stepping on that weapon with my foot as
15 we manipulate his hands and take him into custody. It
16 may not always be me physically picking it up and
17 putting it in a pocket or, you know, throwing it a
18 distance away.

19 MR. LUTZ: All right.

20 THE WITNESS: There's just a lot of variables that
21 go with that.

22 Q. (BY MR. LUTZ) Sure. But you have been
23 trained on specific scenarios where you're securing a
24 suspect's weapon that they've relinquished and taken
25 the person into custody?

<p style="text-align: right;">Page 57</p> <p>1 A. Correct.</p> <p>2 Q. But there's no policy that addresses that</p> <p>3 specific scenario?</p> <p>4 A. No.</p> <p>5 Q. Are there any policies that go into that</p> <p>6 level of detail --</p> <p>7 A. Not that I know.</p> <p>8 Q. -- in a particular scenario?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Okay. Let's talk about Patrick Harmon. Do</p> <p>11 you recall the events of August 13, 2017?</p> <p>12 A. Yes.</p> <p>13 Q. And what shift were you working?</p> <p>14 A. Graveyards.</p> <p>15 Q. And in your patrol capacity?</p> <p>16 A. Correct.</p> <p>17 Q. And what time is the graveyard shift?</p> <p>18 A. 21:30. Sorry. 9:30 p.m.</p> <p>19 Q. And what time does it end?</p> <p>20 A. At 07:30, so 7:30 in the morning.</p> <p>21 Q. Okay. Can you walk me through what happened</p> <p>22 around 10:00 p.m. that evening.</p> <p>23 MS. NICHOLS: Objection, vague and calls for a</p> <p>24 narrative.</p> <p>25 THE WITNESS: That night we completed briefing and</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. What did you do once you saw Mr. Harmon ride</p> <p>2 across the lanes of traffic on his bicycle?</p> <p>3 A. I activated my overhead emergency equipment</p> <p>4 and conducted essentially a traffic stop with him.</p> <p>5 Q. And to go back, is it a crime to not have the</p> <p>6 bicycle taillight?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know what level crime?</p> <p>9 A. I believe it's an infraction. I don't</p> <p>10 remember specifically, but I -- it could be a</p> <p>11 misdemeanor C which is the lowest level of misdemeanor,</p> <p>12 but I'm fairly confident it's an infraction.</p> <p>13 Q. And what's the difference between an</p> <p>14 infraction and a low-level misdemeanor?</p> <p>15 A. Low-level misdemeanor carries a penalty of</p> <p>16 jail time and infraction does not.</p> <p>17 Q. Is an infraction sort of a way to describe a</p> <p>18 civil offense?</p> <p>19 MS. NICHOLS: Objection, calls for a legal</p> <p>20 conclusion.</p> <p>21 Q. (BY MR. LUTZ) Is it something that comes from</p> <p>22 a municipal code?</p> <p>23 A. No. So that one's actually a state code.</p> <p>24 Q. Okay. I understand. Okay.</p> <p>25 Obviously we're going to go into what</p>
<p style="text-align: right;">Page 58</p> <p>1 our assigned area was along State Street and the</p> <p>2 Liberty area of the city, and I left the police</p> <p>3 department and started driving to my area to start</p> <p>4 patrolling.</p> <p>5 Q. (BY MR. LUTZ) Okay. And prior -- so around</p> <p>6 10:00 p.m. you come into contact with Patrick Harmon;</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Prior to that had you made contact with any</p> <p>10 other individuals, stopped anyone, written a citation,</p> <p>11 anything of that nature?</p> <p>12 A. I had not.</p> <p>13 Q. Okay. So what drew your attention to</p> <p>14 Mr. Harmon?</p> <p>15 A. I observed that he was riding his bike south</p> <p>16 along State Street, and he did not have a rear bike</p> <p>17 light, and then he cut across all six lanes of traffic</p> <p>18 without using a hand signal as required when riding in</p> <p>19 the lanes of travel. Then he started riding in front</p> <p>20 of me.</p> <p>21 Q. Okay. And you were driving in which</p> <p>22 direction?</p> <p>23 A. South.</p> <p>24 Q. Do you recall which lane you were in?</p> <p>25 A. No, I don't.</p>	<p style="text-align: right;">Page 60</p> <p>1 happened next. I know that this is not fun to talk</p> <p>2 about and I know you probably don't want to talk about</p> <p>3 it, and I don't bring it up lightly, but it's, you</p> <p>4 know, the entire reason we have this case and we're</p> <p>5 here. But I appreciate this is probably emotional for</p> <p>6 you and I don't intend, through this line of</p> <p>7 questioning to exacerbate that in a way that's</p> <p>8 unnecessary in any way.</p> <p>9 So going back, you used your -- did you say</p> <p>10 you used your intercom to --</p> <p>11 A. My overhead emergency equipment. So my</p> <p>12 lights.</p> <p>13 Q. Okay. Did you use your intercom at all?</p> <p>14 A. I don't recall. I don't think so.</p> <p>15 Q. The reason I ask is because some of the</p> <p>16 witness statements that were later collected by other</p> <p>17 officers, one or two of them report that they think</p> <p>18 they heard police on a loud speaker.</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. What happened after you activated your</p> <p>21 emergency lights?</p> <p>22 A. I made contact with Mr. Harmon. I identified</p> <p>23 who I was and said -- explained to him the reasons that</p> <p>24 I was making contact with him.</p> <p>25 Q. So he responded to your emergency lights by</p>

<p style="text-align: right;">Page 61</p> <p>1 pulling over to the side of the street and stopping?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Did he get off his bicycle at that</p> <p>4 time?</p> <p>5 A. No. He stayed on his bicycle.</p> <p>6 Q. Okay. And which direction was your car</p> <p>7 facing?</p> <p>8 A. South.</p> <p>9 Q. And was his bicycle facing the same</p> <p>10 direction?</p> <p>11 A. It was initially when I turned on my lights,</p> <p>12 he kind of stopped and kind of turned it so it would be</p> <p>13 facing east towards the roadway.</p> <p>14 Q. Okay. Do you recall any of the nearby</p> <p>15 businesses that were there where you stopped?</p> <p>16 A. I can't think of the name, but I know right</p> <p>17 where -- right in front of where we stopped it's a --</p> <p>18 it's an old motel that is now subsidized housing for</p> <p>19 homeless individuals, and we were right in front of</p> <p>20 their east entrance just south of their -- their</p> <p>21 physical driveway.</p> <p>22 Q. Okay. Any other residences, businesses, in</p> <p>23 that block that you recall?</p> <p>24 A. I don't remember the name of the business,</p> <p>25 but I know we were just north of another brick building</p>	<p style="text-align: right;">Page 63</p> <p>1 out and say hey, you gotta leave, and they would remove</p> <p>2 them from their property. I think at that point.</p> <p>3 Usually during the winter, like the fall and the</p> <p>4 winter, they wouldn't just because it's cold, but every</p> <p>5 so often they would see it popped up.</p> <p>6 Q. Okay. None present that night?</p> <p>7 A. No.</p> <p>8 Q. But possibly in the past?</p> <p>9 A. Yeah, in the past, but none that night.</p> <p>10 Q. Okay. So you get out of your car, you</p> <p>11 approach Mr. Harmon?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Does he say anything to you?</p> <p>14 A. I don't remember what exactly he said, but I</p> <p>15 asked him for the information -- his information after</p> <p>16 giving him the reasons for the stop, and we went from</p> <p>17 there, so.</p> <p>18 Q. Did you explain to him that you had stopped</p> <p>19 him for a taillight infraction?</p> <p>20 A. Yes. And for not signaling as he came across</p> <p>21 the lanes of traffic.</p> <p>22 Q. And what was his demeanor in his response to</p> <p>23 you?</p> <p>24 A. He was fairly calm with me. He didn't seem,</p> <p>25 for lack of a better term, upset. I've experienced</p>
<p style="text-align: right;">Page 62</p> <p>1 that was right on the street. I don't remember all the</p> <p>2 rest of the businesses that are now there.</p> <p>3 Q. Okay. In the area where you stopped, was</p> <p>4 that an area that you were regularly patrolling --</p> <p>5 A. Yes.</p> <p>6 Q. -- as an officer?</p> <p>7 Is it a high crime area?</p> <p>8 A. Yes.</p> <p>9 Q. What sorts of things would you typically</p> <p>10 encounter in this area?</p> <p>11 A. Everything from prostitution to narcotics,</p> <p>12 stolen vehicles, robberies. Pretty much everything</p> <p>13 that you could -- you can potentially deal with, we</p> <p>14 dealt with it.</p> <p>15 Q. And to your recollection, was there a lot of</p> <p>16 homelessness in this area?</p> <p>17 A. It's Salt Lake, so yes. But yeah, I mean,</p> <p>18 there was homeless everywhere.</p> <p>19 Q. Do you recall specifically if there were ever</p> <p>20 encampments or homeless folks living in tents around</p> <p>21 this area?</p> <p>22 A. At that time -- I don't think there was any</p> <p>23 at that time, but they would pop up. There's a little</p> <p>24 grassy knoll area and they would pop up and then the</p> <p>25 managers and properties owners of the motel would come</p>	<p style="text-align: right;">Page 64</p> <p>1 people that as soon as I pull them over, they're like</p> <p>2 screw you, and it turns into profanity laced, you know,</p> <p>3 interaction. You know, I had no reason to believe that</p> <p>4 he was angry with me or anything like that.</p> <p>5 Q. So he wasn't hostile towards you when you</p> <p>6 stopped him?</p> <p>7 A. Not to me, no.</p> <p>8 Q. Okay. What did he do when you asked him for</p> <p>9 his information?</p> <p>10 A. He provided me with a name and then I asked</p> <p>11 him for his date of birth. And I also asked him for</p> <p>12 his ID, but he stated that he didn't have it, and so I</p> <p>13 took that information and went, that he did provide me,</p> <p>14 and went to go try and verify who he was.</p> <p>15 Q. Do you recall which -- what the name was that</p> <p>16 he gave you?</p> <p>17 A. I remember the first name that he gave me was</p> <p>18 Peace. I don't remember the last name what he gave me,</p> <p>19 but it was, I want to say it was Peace Harmon, but it</p> <p>20 was something very similar to Harmon. I don't recall</p> <p>21 exactly. But I do remember that the first name that he</p> <p>22 told me was Peace.</p> <p>23 Q. Okay. What did you do after he gave you his</p> <p>24 name and date of birth or told you, rather, that his</p> <p>25 name was Peace and then gave his date of birth?</p>

<p style="text-align: right;">Page 65</p> <p>1 A. I went back to my patrol vehicle, I attempted</p> <p>2 to verify that information through the state databases,</p> <p>3 tried to find some sort of form of identification, who</p> <p>4 he was and what his name was.</p> <p>5 Q. And were you successful in that effort?</p> <p>6 A. No.</p> <p>7 Q. What did you do next?</p> <p>8 A. I returned back to him, had him, again,</p> <p>9 provide that information, had him verify spellings and</p> <p>10 the date of birth and so that in the event, because we</p> <p>11 are on the side of the road, if I misheard and I wrote</p> <p>12 it down wrong or something like that, I want to afford</p> <p>13 him that opportunity to, you know, correct me. And he</p> <p>14 provided me the information again and I again returned</p> <p>15 to my car in an attempt to try and locate his ID or</p> <p>16 some form of identification.</p> <p>17 Q. At some point you called for backup?</p> <p>18 A. Yes.</p> <p>19 Q. Was that before or after you were able to</p> <p>20 identify Mr. Harmon in the database?</p> <p>21 A. Before.</p> <p>22 Q. Okay. Why did you call for backup?</p> <p>23 A. Because based off of my experience, if</p> <p>24 somebody -- I can tell somebody's lying to me by how</p> <p>25 they avoid the types of questions. Like if I were to</p>	<p style="text-align: right;">Page 67</p> <p>1 will, you know, say can any unit come back the other</p> <p>2 unit.</p> <p>3 Q. Okay. And can any officer respond to a call</p> <p>4 like that?</p> <p>5 A. Yes.</p> <p>6 Q. And did any other officers respond?</p> <p>7 A. Yes.</p> <p>8 Q. Who were they?</p> <p>9 A. Officer Clinton Fox and Officer Scott</p> <p>10 Robinson.</p> <p>11 Q. And did you know those officers beforehand?</p> <p>12 A. Yes.</p> <p>13 Q. How well?</p> <p>14 A. Pretty well.</p> <p>15 Q. Let's talk about Officer Fox. Were you</p> <p>16 friends with Officer Fox?</p> <p>17 A. Yes.</p> <p>18 Q. How long had you known him at that point?</p> <p>19 A. Since he started with Salt Lake City. So I</p> <p>20 don't remember when he exactly started, but I believe</p> <p>21 it was 2015, so about two years, roughly.</p> <p>22 Q. Okay. Did you work together?</p> <p>23 A. Yes.</p> <p>24 Q. How often?</p> <p>25 A. Every night. We were on the same squad</p>
<p style="text-align: right;">Page 66</p> <p>1 ask you, you know, for your name and birthdate and your</p> <p>2 social security number, you're going to be able to at</p> <p>3 least identify what your social security number is.</p> <p>4 It's pretty uncommon for people to either not know</p> <p>5 their driver's license number or their social security</p> <p>6 number.</p> <p>7 And when he was unable to provide me with</p> <p>8 his -- with an ID, without an ID number or his social</p> <p>9 security number, for me that -- that raises red flags</p> <p>10 that he's trying to conceal his identity and that more</p> <p>11 than likely he's got some sort of warrant for his</p> <p>12 arrest.</p> <p>13 Q. I see. Prior to this date, had you ever</p> <p>14 encountered Mr. Harmon before?</p> <p>15 A. I had not.</p> <p>16 Q. How did you contact back up?</p> <p>17 A. With my radio.</p> <p>18 Q. And how does that work?</p> <p>19 A. I push the button and say hey, send me an</p> <p>20 additional officer.</p> <p>21 Q. And that puts a call out to -- is it</p> <p>22 broadcast?</p> <p>23 A. Puts it over -- yeah, broadcasts it over the</p> <p>24 air to -- typically I'm talking to dispatch, but it</p> <p>25 broadcasts it at the exact same time, and then dispatch</p>	<p style="text-align: right;">Page 68</p> <p>1 together.</p> <p>2 Q. So every night over the course of years?</p> <p>3 A. Yeah.</p> <p>4 Q. Did you spend time with Officer Fox socially?</p> <p>5 A. A few times.</p> <p>6 Q. How many would you say?</p> <p>7 A. Maybe two or three. We just live so far</p> <p>8 apart that it's kind of a pain in the butt to drive.</p> <p>9 Q. Okay. So had you ever been to his house?</p> <p>10 A. Yes.</p> <p>11 Q. How many times would you say?</p> <p>12 A. I've been to his house once.</p> <p>13 Q. Had he ever been to yours?</p> <p>14 A. No.</p> <p>15 Q. Did you ever spend time together after work?</p> <p>16 Anything like that?</p> <p>17 A. No. Usually after we got off, we -- it was</p> <p>18 bedtime. We all just went home.</p> <p>19 Q. Okay. But there was some social time that</p> <p>20 you guys spent together over the years?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And what about Officer Robinson? How</p> <p>23 well did you know him?</p> <p>24 A. Pretty well.</p> <p>25 Q. How long had you known him on the day that</p>

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1 we're talking about?

2 A. So he used to work at the Salt Lake County
3 Jail with me and that's where I met him. I don't
4 remember when he started down there, but since -- since
5 his employment with Salt Lake County.

6 Q. Okay. And did you ever spend time with
7 Officer Robinson socially?

8 A. Yes.

9 Q. How often?

10 A. After we moved out of Salt Lake County,
11 fairly often because we moved -- ended up moving close
12 to each other. We have kids that are the same age and
13 so our -- my kids ended up playing with his kids fairly
14 regularly.

15 Q. Still friends?

16 A. Yes.

17 Q. How often do you see Officer Robinson today?

18 A. Now maybe once every couple of months. I
19 again moved and due to the difference, I'm going to
20 chew on that word too, difference in schedules and the
21 fact that I live more than an hour away from him, not
22 very often.

23 Q. Okay. Are your children still friends with
24 his children?

25 A. Yeah.

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1 Q. How old are your kids?

2 A. They range from 6 to 14.

3 Q. Okay. How many?

4 A. Four.

5 Q. And what about Officer Robinson?

6 A. He has -- he's got the two girls from his
7 previous marriage and then he's got a stepdaughter and
8 two stepsons on his wife's side.

9 Q. Okay. Going back to the night in question,
10 August 13th, you put the call in for backup. Did
11 the -- did Officers Fox and Robinson respond to you
12 over the radio?

13 A. I would imagine that they did because that's
14 how dispatch knows who's going where. If nobody
15 responds, then dispatch would continue to ask until I
16 got somebody at least acknowledge that they were
17 coming.

18 Q. Okay. Do you have any sense that these --
19 that officers -- either Officer Fox or Robinson would
20 have responded to your call because they have a
21 personal relationship with you and they personally want
22 to come help you out?

23 MS. NICHOLS: Objection, calls for speculation.

24 THE WITNESS: Because we all work on the same
25 squad and we all work the same area.

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1 Q. (BY MR. LUTZ) And you said you were friends
2 at that point?

3 A. Right. But I would say that, yeah, any time
4 that any of us would call out, typically we were going
5 to go because we're the officers that know the area,
6 and in the event that I have to chase somebody down an
7 alley, they're the officers that know that area better
8 than anybody else and so they are best suited to come
9 and help.

10 Q. Okay. Which officer arrived first?

11 A. I don't know. I don't remember. They were
12 both there pretty close to the same time.

13 Q. Okay. And what happened after they arrived?

14 A. I continued to try and sort out Mr. Harmon's
15 information. I re-approached him. If I remember
16 correctly before they arrived, I re-approached him and
17 that's when he gave me his correct information. And
18 then I returned to my car and as I was verifying his
19 identity, that's when they -- they arrived.

20 Officer Fox went up, made contact with him,
21 and Officer Robinson came to my window and, essentially
22 to gain information, and he asked me, he's like hey,
23 what do you got. Explained to him what was going on,
24 that he was providing me with false information, I was
25 trying to figure out who he was.

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1 And then found his -- a recent booking photo
2 of him, found that he had an active second degree
3 felony warrant for aggravated assault with serious
4 bodily injury, told Officer Robinson that, and then
5 exited my car so that we could go take him into
6 custody.

7 Q. Did your system tell you when that warrant
8 was issued?

9 A. It would have.

10 Q. Do you recall when?

11 A. No.

12 Q. Do you recall whether it was old?

13 A. I don't.

14 Q. Would that matter in your estimation?

15 A. No. I mean, the things that we're looking
16 for on the warrant is -- so it tells us active or
17 served. If it shows up as served, that means that I
18 cannot arrest that individual because they've already
19 gone to the judge and addressed that warrant and the
20 court has not removed that warrant from the system yet.

21 If it shows its active, that means that the
22 judge wants to speak to this individual and they want
23 me to take him into custody.

24 Q. Was it Salt Lake City Police Department
25 policy to arrest any individual that had an active

<p style="text-align: right;">Page 73</p> <p>1 warrant?</p> <p>2 A. No.</p> <p>3 Q. Can you explain how you would make that</p> <p>4 determination.</p> <p>5 A. A lot of how would you make that</p> <p>6 determination depends, (a), on the level of the crime.</p> <p>7 So if you have a felony warrant, you are more than</p> <p>8 likely going to be booked into jail on that warrant</p> <p>9 regardless of what the offense was. The caveat to that</p> <p>10 is the Salt Lake City County Jail deals with a lot of</p> <p>11 overcrowding issues, so oftentimes the jail will not</p> <p>12 accept certain types of warrants. However, if it's --</p> <p>13 they will always accept a second degree felony or a</p> <p>14 first degree felony warrant of any kind.</p> <p>15 Q. Okay. Other than what the jail is telling</p> <p>16 you about who they can and cannot accept, did you have</p> <p>17 discretion in whether or not you arrest an individual</p> <p>18 who had an active warrant?</p> <p>19 A. Yes.</p> <p>20 Q. What degree of discretion?</p> <p>21 A. If it's misdemeanor defenses, traditionally</p> <p>22 like nonviolent like if you have a retail theft, that's</p> <p>23 more like -- depending on how many times you've been</p> <p>24 convicted, it's usually a class B misdemeanor.</p> <p>25 Something like that we're not going to take somebody</p>	<p style="text-align: right;">Page 75</p> <p>1 earlier in the evening?</p> <p>2 A. Yes.</p> <p>3 Q. Did that upset you?</p> <p>4 A. No.</p> <p>5 Q. Did that have anything to do with your</p> <p>6 decision to arrest him?</p> <p>7 A. Yes, because I've always taken the stance if</p> <p>8 you're honest with me, then I'll be honest with you and</p> <p>9 be more fair and forgiving if you're honest. But early</p> <p>10 in my career if you tried to conceal your identity and</p> <p>11 lie to me about who you are, then you get booked into</p> <p>12 jail.</p> <p>13 Q. Had Mr. Harmon just presented you a valid ID</p> <p>14 with his accurate name on it initially, would you still</p> <p>15 have arrested him?</p> <p>16 A. On that warrant, yes.</p> <p>17 Q. Okay. Okay. So you told Officer Robinson</p> <p>18 that there was a warrant out and that you were going to</p> <p>19 arrest Mr. Harmon?</p> <p>20 A. Correct.</p> <p>21 Q. Where was Officer Fox at this time?</p> <p>22 A. Still with Mr. Harmon.</p> <p>23 Q. And that's in front of your car with his</p> <p>24 bike?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 74</p> <p>1 and book them into jail.</p> <p>2 The caveat is, you know, if I pull somebody</p> <p>3 up and they have 10 different warrants all for the same</p> <p>4 offense, then I may take that individual in.</p> <p>5 Especially if I'm at the Wal-Mart and I'm rearresting</p> <p>6 them on an additional offense and I look and I see hey,</p> <p>7 they've got 10 misdemeanor warrants for all the same</p> <p>8 offense, then yeah, I'm probably going to arrest that</p> <p>9 person and take them and book them into jail.</p> <p>10 If I pull you over because you have a</p> <p>11 taillight and you have that same one retail theft case</p> <p>12 that's a warrant, I may -- I may just advise you and</p> <p>13 say hey, you do have a warrant out for your arrest,</p> <p>14 it's with this court, you need to contact this court to</p> <p>15 get it taken care, and -- and release them.</p> <p>16 Q. So are you making an assessment on the</p> <p>17 seriousness of the offenses presented?</p> <p>18 A. Yes.</p> <p>19 Q. So why did you decide to arrest Mr. Harmon?</p> <p>20 A. Because it was a second degree felony for an</p> <p>21 aggravated assault.</p> <p>22 Q. Have you ever come across an individual with</p> <p>23 that type of warrant and decide not to arrest them?</p> <p>24 A. No.</p> <p>25 Q. You believed that Mr. Harmon had lied to you</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. What's the distance there between the</p> <p>2 car and the bike?</p> <p>3 A. I don't -- I don't know. I don't remember.</p> <p>4 Q. Was it less than 20 feet?</p> <p>5 A. I think so. It didn't take me very long to</p> <p>6 walk to him from my car, so I, mean, a rough number,</p> <p>7 sure.</p> <p>8 Q. Okay. Ten to 20 feet?</p> <p>9 A. Yeah. Again, I don't remember. It was</p> <p>10 close. If I'm conducting the stop, I want to -- I've</p> <p>11 always tried to give myself a little bit of space</p> <p>12 because there's a reactionary distance, plus you're</p> <p>13 taught that when you pull somebody over on a traffic</p> <p>14 stop, your car needs to be positioned in such a way</p> <p>15 that if somebody comes and rear ends you, that the car</p> <p>16 doesn't come and -- my car that's parked doesn't hit me</p> <p>17 and, you know, who you're talking to.</p> <p>18 So yeah, again, I don't remember the exact</p> <p>19 feet.</p> <p>20 Q. Okay. So you get out of the car on the</p> <p>21 driver's side, obviously?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Officer Robinson is on the passenger side of</p> <p>24 the car?</p> <p>25 A. Uh-huh.</p>

<p style="text-align: right;">Page 77</p> <p>1 Q. You walk up to Officer Fox, the bicycle, and</p> <p>2 Mr. Harmon who's facing back towards you?</p> <p>3 A. Yes.</p> <p>4 Q. You told Mr. Harmon he has a warrant?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Did you say anything else to him?</p> <p>7 A. I directed him, I said hey, you've got a</p> <p>8 warrant, I need you to take the backpack off and put</p> <p>9 your hands behind your back.</p> <p>10 Q. And how did he respond to that?</p> <p>11 A. He started to cry and I don't remember</p> <p>12 exactly what he said, but along the lines of, you know,</p> <p>13 don't do this. Essentially, don't do this to me, man.</p> <p>14 Again, reiterated it's nothing personal, just the judge</p> <p>15 really wants to see you, you've got the warrant, and</p> <p>16 again directed him to put your hands behind your back.</p> <p>17 Q. And he was wearing a backpack at that time?</p> <p>18 A. Correct.</p> <p>19 Q. Do you recall what else he was wearing?</p> <p>20 A. Not specifically. I know he was clothed,</p> <p>21 but, yeah, I don't -- I don't remember anything</p> <p>22 specific about his clothing.</p> <p>23 Q. Okay.</p> <p>24 A. He did have a Mardi Gras necklace on. I do</p> <p>25 remember that.</p>	<p style="text-align: right;">Page 79</p> <p>1 Q. Officer Robinson walks around his left side,</p> <p>2 Mr. Harmon's left side, so you and Officer Robinson are</p> <p>3 now behind Mr. Harmon?</p> <p>4 A. Uh-huh.</p> <p>5 Q. You take Mr. Harmon's -- well, he removes his</p> <p>6 backpack?</p> <p>7 A. Yes.</p> <p>8 Q. He's compliant in that way?</p> <p>9 A. Correct.</p> <p>10 Q. You take Mr. Harmon's right arm and move it</p> <p>11 behind Mr. Harmon's back?</p> <p>12 A. Correct.</p> <p>13 Q. Officer Robinson does the same thing with his</p> <p>14 left arm?</p> <p>15 A. (Nods head.)</p> <p>16 Q. Moves it behind Mr. Harmon's back, Officer</p> <p>17 Robinson starts applying the handcuffs to his left arm</p> <p>18 correct?</p> <p>19 A. I don't remember. I do remember that I was</p> <p>20 reaching for my handcuffs and it was when I touched my</p> <p>21 handcuff case that he decided that he was going to</p> <p>22 bolt.</p> <p>23 Q. So some seconds after you and Officer</p> <p>24 Robinson pulled Mr. Harmon's hands behind his back,</p> <p>25 you're beginning to apply the handcuffs, or at least</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. Like a beaded?</p> <p>2 A. Yeah. It was a beaded with a clown on it.</p> <p>3 Q. Okay. Okay. So did you and either of the</p> <p>4 other officers discuss how you were going to arrest</p> <p>5 Mr. Harmon as in which of you is going to apply the</p> <p>6 handcuffs, things of that nature?</p> <p>7 A. Discuss, no. We'd worked around each other</p> <p>8 long enough that if I'm -- if I'm the arresting</p> <p>9 officer, then I'm going to be doing all that physical</p> <p>10 work. So placing the handcuffs on him is going to come</p> <p>11 from me because I'm the one that's "arresting" him.</p> <p>12 Q. Were you the arresting officer?</p> <p>13 A. I would be, yes.</p> <p>14 Q. What is that based on?</p> <p>15 A. Whoever -- essentially whoever's going to</p> <p>16 take the case and book them into jail.</p> <p>17 Q. Did you decide that that would be you because</p> <p>18 you were the one to stop him in the first place?</p> <p>19 A. Yeah, that's typically how it goes is whoever</p> <p>20 initiates the contact is traditionally going to be the</p> <p>21 arresting officer.</p> <p>22 Q. Officer Fox is in front of Mr. Harmon?</p> <p>23 A. Uh-huh.</p> <p>24 Q. You walk around Mr. Harmon's right side?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 Officer Robinson is, you are reaching for your</p> <p>2 handcuffs, Mr. Harmon brings his arms back to the front</p> <p>3 of his body and begins running away from you?</p> <p>4 A. Correct.</p> <p>5 Q. And where is Officer Fox in relation to</p> <p>6 Mr. Harmon when that action starts?</p> <p>7 A. Still in front of him.</p> <p>8 Q. So Mr. Harmon runs directly away from you</p> <p>9 past Officer Fox a short distance and then turns to his</p> <p>10 own left; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And effectively makes a 180-degree turn?</p> <p>13 A. I would say when he -- we're in the road, he</p> <p>14 turns to his left and is now running west. When he got</p> <p>15 to the sidewalk, he began -- turned to his left and was</p> <p>16 now running south. So, I mean, 290, he's making 180</p> <p>17 degrees, but yes.</p> <p>18 Q. Sure. Exactly. And during this time</p> <p>19 Mr. Harmon has a cigarette in his mouth, a lit</p> <p>20 cigarette?</p> <p>21 A. Yes.</p> <p>22 Q. So Mr. Harmon has made this wide 90-degree</p> <p>23 turn, he's now facing Officer Robinson who's more or</p> <p>24 less in front of him, you are in front of Mr. Harmon to</p> <p>25 Mr. Harmon's left, Mr. Harmon runs south?</p>

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1 A. He runs south, but I think Officer
2 Robinson -- so when he ran, I don't know where -- how
3 Officer Robinson ended up, where he did, but after he
4 ran in between us all, I remember Officer Robinson
5 being behind him and -- and it was me, Officer Fox, and
6 then Officer Robinson. So I don't know how he ended up
7 there, but at some point Officer Robinson falls and
8 then that's when Mr. Harmon continues to run south.

9 Q. Okay. So Mr. Harmon runs south, Officer
10 Robinson ends up on his but on the grass to
11 Mr. Harmon's right?

12 A. Correct.

13 Q. During this time Officer Fox is reaching for
14 Mr. Harmon on his left side, Officer Fox draws his gun
15 about the same time you draw your taser. Mr. Harmon
16 makes it past you about 12 feet?

17 MS. NICHOLS: Objection. Compound, vague and
18 ambiguous, assumes facts not in evidence, potentially
19 misstates evidence.

20 You can answer.

21 Q. (BY MR. LUTZ) How far away was he? How far
22 away from him, Mr. Harmon, were you when you released
23 your taser?

24 A. When I drew my taser?

25 Q. Uh-huh.

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1 A. I have no idea. Close enough that I felt
2 that it was going to be an effective tool, but yeah,
3 I -- I honestly don't remember.

4 Q. But we know it would have been between -- it
5 wouldn't have been more than 15 feet. Or could it have
6 been up to 30 based on --

7 A. It could have been up to 30, but I would say
8 it would be to the lower end of that spectrum because
9 at 30 feet the likelihood of that taser working
10 effectively is low, and so I don't think I would have
11 chosen that tool in that scenario. If he was that far
12 out, I probably would have tried to gain distance on
13 him and then applied that tool.

14 Q. If he's moving away from you and your goal is
15 to gain distance, would you stop and let him create the
16 distance?

17 A. If I'm trying to -- I guess I need to
18 rephrase. Not gain distance, but close the distance to
19 get close enough to him that I can appropriately apply
20 that tool. So if he starts out at 30 feet, I know that
21 my taser's going to be less than effective at that 30
22 feet, so I'm going to try to get closer to him maybe
23 20, maybe 15 feet, maybe 10 depending on how fast he's
24 running, how fast I have to run to get close enough
25 that I feel like that I can effectively deploy that

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1 taser.

2 Q. Okay. So you deploy your taser?

3 A. Yes.

4 Q. Did it impact him?

5 A. I believe so.

6 Q. Was he moving away from you when you deployed
7 your taser?

8 A. No.

9 Q. What was he doing?

10 A. Right before he -- right before I deployed
11 the taser, I watched him stop and turn, try to -- try
12 to turn and face back towards us.

13 Q. Now, did he actually stop moving away from
14 you?

15 A. Again, I saw him plant and try to turn back
16 towards us.

17 Q. And what do you mean by plant?

18 A. So using -- when you're running or doing
19 anything -- like if I want to pivot on my feet, I'm
20 going to have to put a foot out in front to turn and
21 stop that forward momentum enough that I can change
22 direction.

23 Q. Okay. So he planted and pivoted?

24 A. Yes. He started to.

25 Q. In what direction?

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1 A. Started turning towards me, so over -- that
2 would be over his left.

3 Q. Okay. What else did you observe?

4 A. As soon as that occurred, I saw a good target
5 area because as he's turning, I saw an opportunity to
6 deploy the taser and so I did.

7 Q. What's the target area that you're
8 describing?

9 A. So essentially below the nipple line and
10 above the knees. So anywhere in between there is the
11 optimal target area.

12 Q. So you were aiming your taser at what area of
13 his body?

14 A. Towards his chest in his nipple line.

15 Q. Okay. Because he had turned in your
16 direction?

17 A. He had started to, yeah.

18 Q. Started to do that, you fired the taser?

19 A. Correct.

20 Q. When did Officer Fox fire the shots?

21 A. At the same time that I deployed my taser.

22 Q. Do you have any sense of whether your taser
23 was deployed first?

24 A. No, I don't.

25 Q. In your memory they're basically the same

<p style="text-align: right;">Page 85</p> <p>1 time?</p> <p>2 A. Simultaneous, yes.</p> <p>3 Q. Did you see anything in Mr. Harmon's hands?</p> <p>4 A. No.</p> <p>5 Q. Did Mr. Harmon move back towards you?</p> <p>6 A. What do you mean?</p> <p>7 Q. You said that he planted and began to pivot.</p> <p>8 Did he actually move back towards you or Officer Fox?</p> <p>9 A. He did not have the time to.</p> <p>10 Q. Why not?</p> <p>11 A. Because I had tased him and Officer Fox had</p> <p>12 fired his service weapon.</p> <p>13 Q. Okay. And at no point in the interaction up</p> <p>14 to this time did you observe anything in Mr. Harmon's</p> <p>15 hands?</p> <p>16 A. I did not.</p> <p>17 Q. When Mr. Harmon began running away from you,</p> <p>18 did you see Mr. Harmon reaching for his pockets?</p> <p>19 A. I saw him start reaching towards his waist.</p> <p>20 I also heard him say that I'm going to stab or cut. I</p> <p>21 don't specifically recall what was first, the stab or</p> <p>22 cut, but I remember hearing that but not processing</p> <p>23 that until after the fact.</p> <p>24 Q. Okay. Did you believe that Mr. Harmon was</p> <p>25 armed at the time you fired your taser?</p>	<p style="text-align: right;">Page 87</p> <p>1 see Mr. Harmon manifest hostile intentions?</p> <p>2 A. Towards me, no.</p> <p>3 Q. Towards anybody?</p> <p>4 A. No.</p> <p>5 Q. Can you describe his body language in the</p> <p>6 moments prior to you firing your taser?</p> <p>7 A. I mean, what do you mean describe his body</p> <p>8 language? I mean, he's actively running, he's, you</p> <p>9 know, he was distraught. We went from being calm</p> <p>10 during the majority of our interaction to now he's</p> <p>11 distraught, now he's actively trying to flee and resist</p> <p>12 efforts to go, he doesn't want to go to jail. Nobody</p> <p>13 wants to go to jail. I don't know what much more in</p> <p>14 regards to body language.</p> <p>15 Q. Is he doing anything with his hands or arms</p> <p>16 at the moment that he pivoted and turned to his left</p> <p>17 prior to you deploying a taser?</p> <p>18 A. I don't remember.</p> <p>19 (Mr. Riley entered the proceedings.)</p> <p>20 Q. (BY MR. LUTZ) What happened after -- well,</p> <p>21 first, how many times did Officer Fox fire his weapon?</p> <p>22 A. Three.</p> <p>23 Q. Did all of those shots impact Mr. Harmon?</p> <p>24 A. As far as I know.</p> <p>25 Q. Okay. And what happened then?</p>
<p style="text-align: right;">Page 86</p> <p>1 A. I did not.</p> <p>2 Q. And at the time that Mr. Harmon said words to</p> <p>3 the effect of I'll stab or I'll cut you, you don't</p> <p>4 remember which one it is?</p> <p>5 A. Correct.</p> <p>6 Q. And he had a cigarette in his mouth during</p> <p>7 that portion of the interaction?</p> <p>8 A. I don't -- I don't remember if it -- if he</p> <p>9 had taken it out or if it had fallen or what, but I</p> <p>10 know we started with a cigarette. I don't know where</p> <p>11 it ended up or where he lost it.</p> <p>12 Q. Okay. What did you think when you heard the</p> <p>13 shots from Mr. Fox?</p> <p>14 A. Truthfully? What the fuck.</p> <p>15 Q. What made you think that?</p> <p>16 A. Because what I perceived was different than</p> <p>17 what he saw and in my head I had not seen a knife or</p> <p>18 any other reason, so I was trying to figure out exactly</p> <p>19 what he saw and why he felt it was appropriate to fire</p> <p>20 his pistol.</p> <p>21 Q. At that time did you think that deadly force</p> <p>22 was necessary?</p> <p>23 A. If I was basing it solely off of what I could</p> <p>24 see at that time, no.</p> <p>25 Q. Okay. Prior to firing your taser, did you</p>	<p style="text-align: right;">Page 88</p> <p>1 A. After he went to the ground, Officer Fox --</p> <p>2 not Officer Fox, Officer Robinson went and applied</p> <p>3 handcuffs, I called on the radio for additional</p> <p>4 assistance and to start an ambulance that we had one</p> <p>5 individual that had been shot.</p> <p>6 Q. So Officer Robinson approached -- well, let's</p> <p>7 lay the scene a little bit. All three officers are</p> <p>8 facing what direction?</p> <p>9 A. It would be south.</p> <p>10 Q. And Mr. Harmon hit the ground directly in</p> <p>11 front of Officer Fox, you are to your left, Robinson is</p> <p>12 to Fox's right?</p> <p>13 A. Correct.</p> <p>14 Q. Robinson gets there first, you and Fox also</p> <p>15 approach. Did you or Officer Fox reach Mr. Harmon</p> <p>16 first while he was lying on the ground?</p> <p>17 A. I don't remember.</p> <p>18 Q. Up to this point that you're approaching</p> <p>19 Mr. Harmon, had you seen any weapons in his possession</p> <p>20 at all?</p> <p>21 A. No.</p> <p>22 Q. Did you ever see any weapon in Mr. Harmon's</p> <p>23 possession?</p> <p>24 A. I didn't see the weapon until the news</p> <p>25 published it two weeks later.</p>

<p style="text-align: right;">Page 89</p> <p>1 Q. You didn't see a knife on the ground at all?</p> <p>2 A. I did not.</p> <p>3 Q. Do you know what knife I'm talking about?</p> <p>4 A. I've seen the picture since then, so I can</p> <p>5 assume that it's the one that they took the photograph</p> <p>6 of.</p> <p>7 Q. But you never saw it?</p> <p>8 A. Never saw it.</p> <p>9 Q. During this prior to opening fire, did</p> <p>10 Officer Fox say anything to Mr. Harmon or you or</p> <p>11 Officer Robinson about a weapon?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Did he say anything to Officer Fox -- I'm</p> <p>14 sorry, Mr. Harmon or Officer Robinson about a knife?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Did Officer Fox say anything at all prior to</p> <p>17 opening fire?</p> <p>18 A. Having watched the video after the fact, yes.</p> <p>19 Q. Do you recall what he said?</p> <p>20 A. Something to the extent of I will fucking</p> <p>21 shoot you or I will fucking kill you. Something like</p> <p>22 that.</p> <p>23 Q. And how soon after he said that did he open</p> <p>24 fire?</p> <p>25 A. From watching the video, pretty close after</p>	<p style="text-align: right;">Page 91</p> <p>1 back and started really cutting his other pant leg off,</p> <p>2 the large amounts of blood I knew that it was not going</p> <p>3 to be a high likelihood of survivability.</p> <p>4 Q. Where had he been hit?</p> <p>5 A. I remember seeing one in the arm, one in the</p> <p>6 butt cheek, and one in the leg.</p> <p>7 Q. Do you recall which arm?</p> <p>8 A. I think it would be his left. Yeah, his left</p> <p>9 arm.</p> <p>10 Q. And which butt cheek?</p> <p>11 A. I don't remember.</p> <p>12 Q. Do you recall which leg?</p> <p>13 A. I think the right. I don't -- I don't</p> <p>14 remember.</p> <p>15 Q. Okay. Who cut his clothes off?</p> <p>16 A. Officer Fox.</p> <p>17 Q. Walk me through what happened as you're</p> <p>18 trying to apply emergency medicine.</p> <p>19 A. We've called for additional help at that</p> <p>20 point. I remember telling both Officer Fox and Officer</p> <p>21 Robinson hey, we need to start trying to find -- I</p> <p>22 think I said in the video hey, we need to find the</p> <p>23 holes. Officer Fox starts cutting his pants because I</p> <p>24 had tried to pull them down and that wasn't working, so</p> <p>25 Officer Fox just used his knife, cut them, and then we</p>
<p style="text-align: right;">Page 90</p> <p>1 that.</p> <p>2 Q. Was it less than five seconds?</p> <p>3 A. Yes.</p> <p>4 Q. Less than three seconds?</p> <p>5 A. Less than three seconds, I don't know. I</p> <p>6 didn't time it.</p> <p>7 Q. Or is it at the same time?</p> <p>8 A. Pretty close to the same time. I don't know</p> <p>9 the exact time.</p> <p>10 Q. All three officers approach Mr. Harmon?</p> <p>11 A. Uh-huh.</p> <p>12 Q. He's laying on the ground on the sidewalk?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Was he still alive?</p> <p>15 A. He was breathing, albeit, very agonal</p> <p>16 breathing. But at first contact, yes.</p> <p>17 Q. Was he making any noises or saying anything?</p> <p>18 A. Again, the agonal breathing. He did -- there</p> <p>19 were a couple cries. Not like crying sad cry, but he</p> <p>20 like kind of moaned, that kind of cry a couple times.</p> <p>21 Q. By the time that you approached him, did you</p> <p>22 suspect that he had been fatally wounded?</p> <p>23 A. As we started trying to remove articles of</p> <p>24 clothing so that we could find out where he was hit,</p> <p>25 initially, no, but then as we rolled him over onto his</p>	<p style="text-align: right;">Page 92</p> <p>1 had additional officers start to show up.</p> <p>2 And then I don't remember who it was, but one</p> <p>3 started to apply a tourniquet to his leg. And then at</p> <p>4 that time the on-duty supervisor showed up, and a ton</p> <p>5 of other officers, and they took over rendering aid and</p> <p>6 the supervisor moved us off.</p> <p>7 Q. Okay. Who was the supervisor?</p> <p>8 A. His name was Sergeant Sweeney.</p> <p>9 Q. Okay. That's Alma?</p> <p>10 A. Yeah.</p> <p>11 Q. Were you very familiar with Sergeant Sweeney?</p> <p>12 A. Just from work, but yes.</p> <p>13 Q. Any social relationship?</p> <p>14 A. No.</p> <p>15 Q. How long after the shots were fired did</p> <p>16 Sergeant Sweeney arrive?</p> <p>17 A. I have no idea. Pretty quick.</p> <p>18 Q. Okay.</p> <p>19 A. Because I know he was one of the first people</p> <p>20 there.</p> <p>21 Q. Stepping back, at the time that you begin</p> <p>22 emergency medical procedures on Mr. Harmon, all three</p> <p>23 of you, as in yourself, Officer Fox, Officer Robinson,</p> <p>24 are within reaching distance of Mr. Harmon?</p> <p>25 A. Yes.</p>

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1 Q. And Mr. Harmon is alive at that time?

2 A. When we initially contacted him, yes, but

3 having dealt with similar circumstance, he wasn't there

4 for much longer.

5 Q. At any point in the time that you guys are

6 applying emergency medical procedures in close

7 proximity to Mr. Harmon, did Officer Fox mention a

8 knife?

9 A. No.

10 Q. During that same time period, did Officer

11 Robinson mention a knife?

12 A. Not that I remember.

13 Q. Did either officer ever mention a knife?

14 A. While we're trying to give aid, no.

15 Q. Before you left the scene, did anyone mention

16 a knife to you?

17 A. No.

18 Q. Given what we discussed earlier about

19 securing weapons from suspects who have relinquished

20 them, had those officers -- had Officer Fox known there

21 was a knife in your, you know, within reaching distance

22 of Mr. Harmon who was alive at the time, would you have

23 expected him to mention it?

24 A. It would have been nice to know, but for

25 whatever reason, he didn't.

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1 Q. Would you have expected him to secure it?

2 A. In a perfect scenario, yes, but now we're

3 moving from simply trying to take somebody into custody

4 to now we have to render aid to this individual and so

5 our focus shifts. You know, I think the higher

6 priority becomes trying to maintain this individual's

7 life over securing the weapon specifically since he's

8 not making -- taking any sort of active action to try

9 and reacquire that item.

10 So, again, I never saw it, so I can't -- I

11 don't know why they didn't. All I can tell you is that

12 after it was fired, all of our attention was to try and

13 render aid to get him taken care of as best as we

14 could.

15 Q. Want to take a break?

16 A. Yes, please.

17 Q. Okay. Thank you.

18 (Recess taken from 11:33 a.m. to 11:53 a.m.)

19 Q. (BY MR. LUTZ) I have some questions now about

20 your body camera.

21 A. Okay.

22 Q. It's the Axon brand?

23 A. Yes. I think.

24 Q. The one that you're wearing?

25 A. Yeah.

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1 Q. Can you describe for me what the physical

2 layout is on your body.

3 A. So at -- so at the time it was the collar

4 cameras, so you had a battery pack that you had to put

5 inside your shirt and then you had to run a wire

6 through your shirt up and around, and then there was

7 like a little magnet strip that you clip to your

8 collar, and then the camera sat up here on your neck

9 (indicating).

10 Q. Okay. And where's the control module?

11 A. On that battery pack.

12 Q. Okay. At what point in your interaction with

13 Mr. Harmon did you activate yours?

14 A. I think it was like the second time, close to

15 the second time that I went up and started talking to

16 him.

17 Q. Okay. Is there a policy or procedure that

18 applies to when you were supposed to activate it?

19 A. There is.

20 Q. When is that?

21 A. When you make contact with anybody.

22 Q. Okay. So it's -- the camera, how big is the

23 camera?

24 A. I mean, that one is only like three inches

25 long and maybe like an half inch by half an inch wide

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1 and tall.

2 Q. And it sits on the lapel of your collar?

3 A. Yeah. Just had the magnet and then it sat

4 right here (indicating).

5 Q. Okay. So it's pretty close to your eye

6 level?

7 A. Yes.

8 Q. It's not -- there are versions of these

9 cameras that cover the chest; right?

10 A. Correct.

11 Q. Okay. So the view that you're getting from

12 the lapel camera is only a few inches down from your

13 eye line; right?

14 A. Typically.

15 Q. Okay.

16 A. Oftentimes you'd get -- because the wire,

17 sometimes if you moved wrong or you sat in the car

18 wrong, then the wire had a tendency to get pulled on

19 and so then you'd have the camera and it'd be pointing

20 up like at your cheek or at the ground if you bumped it

21 wrong.

22 Q. Okay. You've reviewed your body camera

23 footage from the incident with Mr. Harmon; right?

24 A. Yes.

25 Q. How many times?

<p style="text-align: right;">Page 97</p> <p>1 A. Maybe half a dozen.</p> <p>2 Q. From your view, does it appear to you that</p> <p>3 that your camera was in the correct position?</p> <p>4 A. Looks like it.</p> <p>5 Q. Pretty much in line with your eye level?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. When did you first see the video?</p> <p>8 A. When they released it to the media, so 10</p> <p>9 days after.</p> <p>10 Q. That was the first time you saw your own?</p> <p>11 A. Yes.</p> <p>12 Q. Did you watch either of the other officers?</p> <p>13 A. Yeah. All the -- all the footage that they</p> <p>14 released.</p> <p>15 Q. Did you give a statement to investigators</p> <p>16 after the incident?</p> <p>17 A. I did.</p> <p>18 Q. Had you seen the footage prior to giving that</p> <p>19 statement?</p> <p>20 A. I had not.</p> <p>21 Q. What date did you provide a statement to</p> <p>22 investigators?</p> <p>23 A. The same day.</p> <p>24 Q. And who interviewed you?</p> <p>25 A. Unified Police.</p>	<p style="text-align: right;">Page 99</p> <p>1 Q. (BY MR. LUTZ) While I try to deal with this,</p> <p>2 have you ever been to Price?</p> <p>3 A. Price, Utah?</p> <p>4 Q. Uh-huh.</p> <p>5 A. I've driven through it.</p> <p>6 Q. Have you ever been to Castlevew Hospital?</p> <p>7 A. No, not that I can think of.</p> <p>8 Q. Do you know anyone who works for Castlevew</p> <p>9 Hospital?</p> <p>10 A. Huh-uh.</p> <p>11 Q. Or have you ever?</p> <p>12 A. Hm-mm.</p> <p>13 Q. Any idea if Officer Fox ever worked there?</p> <p>14 A. Huh-uh.</p> <p>15 Q. Same thing for Officer Robinson?</p> <p>16 A. Yeah, I have no idea.</p> <p>17 Q. Do you know if either Officer Fox or Officer</p> <p>18 Robinson worked as an EMT in their previous careers?</p> <p>19 A. I know Officer Fox does the volunteer fire</p> <p>20 department. I don't know -- I would imagine being on</p> <p>21 the volunteer fire department, but I don't know</p> <p>22 specifically.</p> <p>23 Q. Okay. You've never worked as an EMT?</p> <p>24 A. I have.</p> <p>25 Q. You have?</p>
<p style="text-align: right;">Page 98</p> <p>1 Q. Do you remember which officers?</p> <p>2 A. I don't.</p> <p>3 Q. Was that investigation recorded? Or, I'm</p> <p>4 sorry, that interview recorded?</p> <p>5 A. I would imagine, yes.</p> <p>6 MR. LUTZ: I don't know that we have audio of --</p> <p>7 MS. NICHOLS: I think there might be a technical</p> <p>8 issue because it's from Unified, so maybe we can chat</p> <p>9 about that. I think we produced what we have, but</p> <p>10 there might be an issue in being able to play it, so</p> <p>11 maybe we can chat about that.</p> <p>12 MR. LUTZ: Okay. Sounds good. Thank you, Katie.</p> <p>13 Q. (BY MR. LUTZ) Is there anything that you</p> <p>14 explained to the investigators in that interview with</p> <p>15 UPD that you haven't told me today?</p> <p>16 A. Not that I recall.</p> <p>17 MR. LUTZ: Can we get -- there are photos of the</p> <p>18 officers from that evening. Can we get a printout of</p> <p>19 the photo of Officer Smith?</p> <p>20 MR. RILEY: I'm not sure I have that.</p> <p>21 MR. LUTZ: Is there an issue with identifying an</p> <p>22 exhibit, a digital exhibit, so long as we put the Bates</p> <p>23 number on the record?</p> <p>24 MS. NICHOLS: I think that's fine from my</p> <p>25 perspective.</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Where?</p> <p>3 A. For the Unified Fire.</p> <p>4 Q. And when was that?</p> <p>5 A. 2003-2004. I don't remember.</p> <p>6 Q. And where were they located?</p> <p>7 A. They're here in town.</p> <p>8 Q. What sort of tools did you carry as an EMT?</p> <p>9 A. So I was assigned as one of the wildland</p> <p>10 firefighters. I wasn't the assigned EMT. I was EMT</p> <p>11 certified. I was just kind of a backup, so I didn't</p> <p>12 carry any of it or -- the team EMT carried it all.</p> <p>13 Q. Did you carry a rescue knife?</p> <p>14 A. I mean, we carried a pocketknife, but</p> <p>15 everybody carried a pocketknife.</p> <p>16 Q. Okay. Going back to some training material,</p> <p>17 we talked about how you regularly drew your firearm and</p> <p>18 aimed it at suspects for felony stops and things of</p> <p>19 that nature.</p> <p>20 A. Uh-huh.</p> <p>21 Q. Did you -- is there any training that you</p> <p>22 received on what an appropriate distance is between you</p> <p>23 and a suspect for drawing or using your firearm?</p> <p>24 A. You're taught that distance is your friend,</p> <p>25 but to that same accord, you're also taught to know</p>

<p style="text-align: right;">Page 101</p> <p>1 your limitations. I'm not going to go back a hundred</p> <p>2 yards and try to use my pistol because even world class</p> <p>3 competition shooters are not going to be accurate at a</p> <p>4 hundred yards with a pistol.</p> <p>5 Q. Right.</p> <p>6 A. So it was more understanding your limitations</p> <p>7 on where you're confident and shooting to be able to</p> <p>8 accurately address the threat that's posed to you.</p> <p>9 Q. Conversely, can you be too close for the</p> <p>10 proper use of your firearm to a suspect?</p> <p>11 A. I would say no.</p> <p>12 Q. If a suspect's standing right in front of</p> <p>13 you, still appropriate to draw?</p> <p>14 A. If I -- if he presents a deadly or lethal</p> <p>15 force situation, then yes, we're taught that you can</p> <p>16 draw from the holster and instead of coming out and</p> <p>17 presenting at a full draw, meaning arms all the way</p> <p>18 extended pointing, I can come out of the holster and</p> <p>19 still accurately put rounds on -- on the individual</p> <p>20 while keeping the gun close to my side so that I'm</p> <p>21 maintaining control over that lessening the opportunity</p> <p>22 he has to try and obtain my weapon from me</p> <p>23 (indicating).</p> <p>24 Q. And you were just demonstrating by holding</p> <p>25 your hand kind of up against your rib cage close to the</p>	<p style="text-align: right;">Page 103</p> <p>1 near Mr. Harmon on the ground.</p> <p>2 A. Uh-huh.</p> <p>3 Q. Are you aware that that knife was tested for</p> <p>4 latent fingerprints and DNA?</p> <p>5 A. I'm not aware.</p> <p>6 Q. Have you ever seen lab reports?</p> <p>7 A. I have not.</p> <p>8 Q. I'm sorry, let me specify. A lab report</p> <p>9 addressing a latent fingerprint test or a DNA test?</p> <p>10 A. In regards to that knife?</p> <p>11 Q. In regards to any, in any of your criminal</p> <p>12 investigations.</p> <p>13 A. Not that I can think of.</p> <p>14 Q. Okay. So that's never come up in any case</p> <p>15 that you've testified in, a weapon or a piece of</p> <p>16 evidence with the suspect's fingerprints or DNA?</p> <p>17 A. Off the top of my head, no. I know there's</p> <p>18 been cases that involved that, but I'm not the one</p> <p>19 that's doing the testing. And so I know that when that</p> <p>20 has been involved, it's usually the crime lab</p> <p>21 technician that's -- that's testified to that, so.</p> <p>22 Q. Okay. When was the last time you watched any</p> <p>23 of the live body cam footage from that day?</p> <p>24 A. Last Wednesday.</p> <p>25 Is that when we met (to Ms. Nichols)?</p>
<p style="text-align: right;">Page 102</p> <p>1 chest?</p> <p>2 A. Yes.</p> <p>3 Q. In a situation like that is there any risk of</p> <p>4 being disarmed by the suspect?</p> <p>5 A. Yes.</p> <p>6 Q. In your experience once you've drawn your</p> <p>7 fire arm and are, you know, engaging with a suspect,</p> <p>8 does having your firearm drawn then limit the force</p> <p>9 options you have in front of you?</p> <p>10 A. Limit them in what regard?</p> <p>11 Q. Well, what I'm getting at is once the firearm</p> <p>12 is drawn, are you able to, say, tackle or use control</p> <p>13 holds or draw your taser?</p> <p>14 A. Not without reholstering your weapon. It</p> <p>15 would be very unwise to try and tackle somebody with my</p> <p>16 pistol out. If I know that I'm going to go hands on</p> <p>17 with somebody and have it become a physical</p> <p>18 confrontation, then I'm not going to have my pistol</p> <p>19 out.</p> <p>20 Q. Okay.</p> <p>21 A. But I'm also not going to try to go hands on</p> <p>22 with somebody that is presenting a lethal force</p> <p>23 scenario.</p> <p>24 Q. I see. Okay. So we talked a little bit</p> <p>25 about how it was later and how there was a knife out</p>	<p style="text-align: right;">Page 104</p> <p>1 Last week when I met with Katie.</p> <p>2 Q. And which footage did you watch?</p> <p>3 A. All of it.</p> <p>4 Q. All?</p> <p>5 A. All three of them.</p> <p>6 Q. Did you watch any enhanced or alternative</p> <p>7 angles?</p> <p>8 A. No.</p> <p>9 Q. Did you ever issue a written report in this</p> <p>10 case?</p> <p>11 A. No, because I -- because we gave the</p> <p>12 statement to the investigators that night. I don't</p> <p>13 believe they had us do a written report.</p> <p>14 Q. What conversations did you have with Officer</p> <p>15 Fox about the incident with Mr. Harmon after it</p> <p>16 happened?</p> <p>17 A. We talked about the entire thing and what</p> <p>18 he -- his version of events and my version of events.</p> <p>19 Q. What did he tell you about his version of</p> <p>20 events?</p> <p>21 A. I remember he asked if I had seen the knife</p> <p>22 and I told him no.</p> <p>23 Q. Did he tell you that he did?</p> <p>24 A. Yes.</p> <p>25 Q. Did he explain why he didn't tell you about</p>

<p style="text-align: right;">Page 105</p> <p>1 it?</p> <p>2 A. No.</p> <p>3 Q. Did you ask?</p> <p>4 A. No.</p> <p>5 Q. Why not?</p> <p>6 A. I don't know. Probably because I was still</p> <p>7 trying to process everything that -- that's happened.</p> <p>8 Q. Did you feel any obligation to look out for</p> <p>9 him?</p> <p>10 MS. NICHOLS: Objection, vague.</p> <p>11 THE WITNESS: Look out for him in what regard?</p> <p>12 Q. (BY MR. LUTZ) I mean, if there's a piece of</p> <p>13 evidence on the scene that could presumably justify a</p> <p>14 shooting had he seen it, did you feel any obligation as</p> <p>15 his friend to go with that version of events that would</p> <p>16 justify the shooting keep him out of trouble?</p> <p>17 A. If I did, I would have said that I saw the</p> <p>18 knife.</p> <p>19 Q. I see. When did you have this first</p> <p>20 conversation with Officer Fox?</p> <p>21 A. The following day.</p> <p>22 Q. How many additional conversations did you</p> <p>23 have on that subject?</p> <p>24 A. Going over everything that occurred, probably</p> <p>25 just that one. Everything since then has been</p>	<p style="text-align: right;">Page 107</p> <p>1 case with Officer Robinson, did Officer Robinson ever</p> <p>2 mention the presence of a knife?</p> <p>3 A. I don't remember.</p> <p>4 Q. Do you know whether or not Officer Robinson</p> <p>5 believes he saw a knife?</p> <p>6 A. That I don't know.</p> <p>7 Q. It's never come up in any of your</p> <p>8 conversations?</p> <p>9 A. Huh-uh.</p> <p>10 Q. Despite not having seen a knife at the scene</p> <p>11 at any time, you said you became aware that one was</p> <p>12 found when it was released on the news?</p> <p>13 A. Correct.</p> <p>14 Q. Did you see a picture of it?</p> <p>15 A. Yes.</p> <p>16 Q. I'm just going to hand you -- this will be 2.</p> <p>17 (Exhibit 2 marked.)</p> <p>18 Q. (BY MR. LUTZ) Please take a look at Exhibit 2</p> <p>19 here which is SLCPD 001769. Does that look like the</p> <p>20 picture that you saw of the knife that was allegedly</p> <p>21 recovered?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recognize the knife depicted in</p> <p>24 Exhibit 2 from anywhere else?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 106</p> <p>1 notifications of litigation and things along that</p> <p>2 nature.</p> <p>3 Q. So you and Officer Fox had a conversation</p> <p>4 about what had happened prior to your statement to</p> <p>5 investigators?</p> <p>6 A. No. My statement was that night.</p> <p>7 Q. I see.</p> <p>8 A. And I talked to him the following day.</p> <p>9 Q. Okay. And you have discussed the litigation</p> <p>10 with Officer Fox?</p> <p>11 A. Yeah.</p> <p>12 Q. What all have you talked about?</p> <p>13 A. What else have you heard, when's, you know,</p> <p>14 what's the attorneys told you, when's, you know, I know</p> <p>15 this has been to court and been dismissed and then it</p> <p>16 was appealed and brought back and things along that</p> <p>17 nature.</p> <p>18 Q. Have you talked about it often?</p> <p>19 A. No.</p> <p>20 Q. What about with Officer Robinson, have you</p> <p>21 discussed the litigation?</p> <p>22 A. The same thing, yeah. Yeah, what have you</p> <p>23 heard. Hey, the attorney really wants you to call her</p> <p>24 back, don't ignore her number. Things like that.</p> <p>25 Q. In your conversation about the facts of the</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Have you ever seen it before?</p> <p>2 A. No.</p> <p>3 Q. Okay. Do you recognize any of the features</p> <p>4 of that knife?</p> <p>5 MS. NICHOLS: Objection, vague.</p> <p>6 THE WITNESS: I mean, it's a handle and a blade.</p> <p>7 Looks like a folding knife.</p> <p>8 Q. (BY MR. LUTZ) If I just circle that</p> <p>9 component, do you recognize what that feature is?</p> <p>10 A. It looks like a seatbelt cutter.</p> <p>11 Q. Okay. And same thing, it's hard to see here.</p> <p>12 What about that feature (indicating)?</p> <p>13 A. (Peruses document.)</p> <p>14 I'm not really seeing. To me it just looks</p> <p>15 rounded.</p> <p>16 Q. Okay. That's fine. Okay.</p> <p>17 Corey, do you want to step out for a second?</p> <p>18 MR. RILEY: Sure.</p> <p>19 MR. LUTZ: We'll just take two minutes.</p> <p>20 MS. NICHOLS: Yeah.</p> <p>21 (Recess taken from 12:15 p.m. to 12:20 p.m.)</p> <p>22 Q. (BY MR. LUTZ) Going back to your career with</p> <p>23 the Salt Lake City Police Department, were you ever</p> <p>24 accused of violating departmental policies?</p> <p>25 A. I had at least -- there were two IA cases</p>

<p style="text-align: right;">Page 109</p> <p>1 that were presented in relation to some of my canine</p> <p>2 bites both which the disposition on those was I was</p> <p>3 exonerated from any sort of policy violation or any</p> <p>4 sort of wrongdoing.</p> <p>5 Q. Were those citizens initiated complaints?</p> <p>6 A. No. Those were department issued.</p> <p>7 Q. Okay. When were these two incidents?</p> <p>8 A. 2020 was when they were, I think, initiated.</p> <p>9 Q. And starting with the first one in time, do</p> <p>10 you remember when in 2020 it was?</p> <p>11 A. It would have been September of 2020 is when</p> <p>12 they were initiated.</p> <p>13 Q. Okay. And what were the allegations?</p> <p>14 A. Excessive use of force.</p> <p>15 Q. What happened?</p> <p>16 A. Both canine deployments used the canine to</p> <p>17 apprehend suspects and take them into custody. It all</p> <p>18 related to that -- the other canine handler issue that</p> <p>19 we talked about earlier. The department went through</p> <p>20 and reviewed everything for the last five years and</p> <p>21 said we feel like these two are possible violations, so</p> <p>22 they submitted them to internal affairs to review.</p> <p>23 Q. No disciplinary action --</p> <p>24 A. None.</p> <p>25 Q. -- taken for that?</p>	<p style="text-align: right;">Page 111</p> <p>1 that I had no idea that they had even been filed.</p> <p>2 Q. Was that recently?</p> <p>3 A. No. That was -- I don't remember the exact</p> <p>4 dates, but it's been several years.</p> <p>5 Q. How did you learn about them recently?</p> <p>6 A. In our trial prep. Or deposition prep.</p> <p>7 Q. Okay. At the time they were filed, nobody</p> <p>8 from the department informed you that a complaint was</p> <p>9 filed against you?</p> <p>10 A. None.</p> <p>11 Q. So, I take it, none of those complaints were</p> <p>12 sustained against you?</p> <p>13 A. No.</p> <p>14 Q. Okay. I think that's all that I have for you</p> <p>15 today. We'll turn it back to your attorney.</p> <p>16 MS. NICHOLS: Yeah. Could I take a three-minute</p> <p>17 break and just confer and I'll see if I have any</p> <p>18 questions?</p> <p>19 MR. LUTZ: Sure.</p> <p>20 MS. NICHOLS: Thanks.</p> <p>21 (Recess taken from 12:25 p.m. to 12:31 p.m.)</p> <p>22 MS. NICHOLS: I don't have any questions. We</p> <p>23 would like to read and sign.</p> <p>24 MR. LUTZ: Just one final thought. We'll talk</p> <p>25 about the IA interviews.</p>
<p style="text-align: right;">Page 110</p> <p>1 A. No.</p> <p>2 Q. Were the suspects injured in those incidents?</p> <p>3 A. Yes.</p> <p>4 Q. Can you describe the injuries.</p> <p>5 A. Dog bite.</p> <p>6 Q. To where?</p> <p>7 A. One was on the arm and then the other one was</p> <p>8 a leg.</p> <p>9 Q. Did either of those incidents require the</p> <p>10 suspect's hospitalization?</p> <p>11 A. No. They're -- by protocol they're taken to</p> <p>12 the hospital and evaluated because the jail will not</p> <p>13 accept anybody that's been untreated that has open</p> <p>14 wounds and things like that, so they're taken to the</p> <p>15 hospital and then after they're released, then booked</p> <p>16 into jail.</p> <p>17 Q. Okay. Have you ever been the subject of a</p> <p>18 citizen complaint of excessive force?</p> <p>19 A. Not that I know of.</p> <p>20 Q. Have you ever been the subject of a citizen</p> <p>21 complaint of another departmental policy violation?</p> <p>22 A. Yes.</p> <p>23 Q. Can you tell me about that.</p> <p>24 A. So I just barely learned about them</p> <p>25 because -- but apparently rudeness was a couple of them</p>	<p style="text-align: right;">Page 112</p> <p>1 MS. NICHOLS: Okay.</p> <p>2 MR. LUTZ: In the event that there's a new one</p> <p>3 there that we weren't able to discuss today, can we</p> <p>4 open this again for that purpose?</p> <p>5 MS. NICHOLS: We can talk about it. I mean, I</p> <p>6 might object to that, but.</p> <p>7 MR. LUTZ: I just want to put it on the record</p> <p>8 that we're going to do that, so we'll confer.</p> <p>9 MS. NICHOLS: Yeah, that sounds great. Okay.</p> <p>10 (The proceedings ended at 12:32 p.m.)</p> <p>11 - - -</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 113

1 STATE OF UTAH)
) ss.
 2 COUNTY OF SALT LAKE)
 3 REPORTER'S CERTIFICATE
 4 I, Amanda Richards, certified shorthand reporter
 5 for the State of Utah, certify:
 6 That the deposition of the witness herein was
 7 taken before me at the time and place herein set forth,
 8 at which time the witness was by me duly sworn to
 9 testify the truth; that the testimony of the witness
 10 and all objections made and all proceedings had of
 11 record at the time of the examination were
 12 stenographically reported and transcribed by me.
 13 That the foregoing transcript, as transcribed by
 14 me, is a full, true and correct record of my
 15 stenographic notes so taken; that review of the
 16 transcript by the witness was requested pursuant to
 17 Rule 30(e) of the Utah Rules of Civil Procedure.
 18 I further certify that I am neither counsel for
 19 nor related to any party to said action, nor in anywise
 20 interested in the outcome thereof.
 21 IN WITNESS WHEREOF, I have subscribed my name
 22 below this 5th day of July 2022.
 23
 24 Amanda Richards
 25
 Amanda Richards, CSR

Page 114

1 WITNESS CERTIFICATE
 2 I, KRIS SMITH, HEREBY DECLARE:
 3 That I am the witness referred to in the
 4 foregoing deposition, and that I have read the
 5 foregoing deposition testimony and have made any
 6 changes/corrections I deem necessary below and
 7 together the same truly and accurately reflect my
 8 testimony.
 9 PAGE-LINE: CHANGE/CORRECTION REASON:
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 I, KRIS SMITH, hereby declare under the penalties
 20 of perjury of the laws of the United States of America
 21 and the laws of the State of Utah that the foregoing is
 22 true and correct.
 23 DATED _____, 20____.
 24 _____
 25 KRIS SMITH

ESTATE OF PATRICK HARMON, SR., et al. vs SALT LAKE CITY CORPORATION, et al.
KRIS SMITH - 06/16/2022

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